OPINION OF ADVOCATE GENERAL COSMAS
delivered on 28 May 1998 *

Table of contents

I — Introduction ..... I - 6634

II — Legal context ..... I - 6634

A — Community provisions ..... I - 6634

(1) Council Regulation No 822/87 ..... I - 6634

(2) Commission regulations ..... I - 6641

(a) Commission Regulations Nos 2396/84 and 3929/87 ..... I - 6641

(b) Commission Regulation No 441/88 ..... I - 6642

(c) Commission Regulation No 343/94 ..... I - 6644

(d) Commission Regulations Nos 465/94 and 610/94 ..... I - 6645

(e) Commission Regulations Nos 1960/94 and 3151/94 ..... I - 6647

B — National provisions ..... I - 6648

III — Facts ..... I - 6648

IV — The questions ..... I - 6648

V — Admissibility of the questions ..... I - 6649

A — General ..... I - 6649

B — Admissibility of Questions 6 and 7 in particular ..... I - 6651

VI — Answers to the questions ..... I - 6651

A — Questions 1 and 2: determination of the total quantity of wine to be distilled by Italy in the 1993/94 wine year ..... I - 6652

(1) Question 1: infringement of the prohibition of discrimination ..... I - 6652

(a) Issues raised ..... I - 6652

(b) Case-law of the Court ..... I - 6654

* Original language: Greek.

(c) The quantity Italy was required to distil ..... I - 6654

(i) Determination of the total quantity for distillation ..... I - 6655

(ii) The criterion for determining the distillation requirement ... I - 6657

(iii) Allocation of the distillation requirement ..... I - 6658

(d) Allocation on the basis of data forwarded by Italy ..... I - 6660

(e) Carrying over ('decanting') undistilled quantities from one wine year to the next ..... I - 6661

(2) Question 2: breach of the principle of the protection of legitimate expectations ..... I - 6664

B — Questions 3 and 4: the criterion of yield per hectare ..... I - 6665

(1) Question 3: impossibility of correctly assessing the yield per hectare for the region constituted by Italy; *ultra vires* action on the part of the Commission ..... I - 6665

(2) Question 4: allocation of quantities to be distilled on the basis of the criterion of yield per hectare; contravention of the principle of proportionality, in particular the manifestly inappropriate nature of the measure adopted ..... I - 6668

(a) The case-law of the Court concerning the principle of proportionality and the extent of the Court's power of review ..... I - 6668

(b) The objective sought ..... I - 6670

(c) Is the measure necessary and appropriate? ..... I - 6671

(d) Weighing up the advantages and disadvantages ..... I - 6672

C — Question 5: designation of Italy as a single region ..... I - 6673

D — Questions 6 and 7: extension of the time-limit for producers to deliver the quantities for distillation ..... I - 6676

(1) Question 6: infringement of the law ..... I - 6676

(2) Question 7: infringement of the principle of proportionality ..... I - 6678

VII — Conclusion ..... I - 6679

I — Introduction

1. In this case the Court is requested by the Pretura Circondariale di Treviso, Sezione Distaccata di Conegliano (District Magistrates' Court, Treviso, Conegliano Section) to give a ruling on the validity of a series of provisions in regulations which relate to the scheme for the compulsory distillation of table wines introduced as part of the effort to improve conditions in the wine market.

II — Legal context

A — *Community provisions*

(1) Council Regulation No 822/87

2. The Council, acting under Articles 42 and 43 of the Treaty, adopted Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine, [1] which consolidated anew the basic provisions concerning the common organisation of the market in wine.

3. The common organisation of that market is a complex system which lays down rules governing production and control of the development of wine-growing potential (Title I, Articles 2 to 14) and rules governing oenological practices and processes (Title II, Articles 15 to 26). It also lays down a price system and rules governing intervention and other measures to improve market conditions (Title III, Articles 27 to 51), provisions relating to trade with third countries (Title IV, Articles 52 to 63), rules governing free circulation and release to the market (Title V, Articles 64 to 73) and, lastly, some general provisions (Title VI, Articles 74 to 87).

4. Under Article 1(6) of Regulation No 822/87, [2] the wine year begins on 1 September each year and ends on 31 August of the following year.

5. Under Article 3(1) of Regulation No 822/87, harvest declarations must be submitted by producers of grapes for wine-

1 — OJ 1987 L 84, p. 1.

2 — As amended by Council Regulation (EEC) No 1734/91 of 13 June 1991 (OJ 1991 L 163, p. 6).

making and by producers of must and wine; in addition, producers of must and wine and merchants other than retailers must declare their stocks of must and wine.

4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 83.'

Article 83 lays down a procedure whereby the Management Committee for Wine, [3] which consists of representatives of the Member States, delivers its opinion by the majority laid down in Article 148(2) of the Treaty. [4]

6. Article 31 provides as follows:

'1. A forward estimate shall be drawn up before 10 December of each year for the purpose of determining the Community's resources and estimating its needs, including foreseeable imports from and exports to third countries.

2. The forward estimate of the Community's wine resources and needs shall show the proportion of table wines and quality wines [psr], respectively.

3. For each wine year, the Commission shall provide the Council with a final statement of Community resources and utilisation in the preceding wine year.

7. The measures for stabilising and improving conditions in the wine market provided for by Regulation No 822/87 include preventive distillation (Article 38), [5] compulsory distillation (Article 39) and support distillation (Arti-

3 — Under Article 82, that committee consists of representatives of the Member States and is chaired by a representative of the Commission, who does not vote.

4 — Article 83 reads:
'1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee, either on his own initiative or at the request of the representative of a Member State.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be adopted. The Committee shall deliver its opinion on the draft within a time-limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority provided for in Article 148(2) of the Treaty.
3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.
The Council, acting by a qualified majority, may take a different decision within one month.'

5 — More specifically, Article 38(1) of Regulation No 822/87, which relates to measures for preventive distillation, provides that where necessary, having regard to harvest forecasts in order to improve the quality of products put on the market, preventive distillation of table wines and wines suitable for yielding table wines may be decided on in each wine year, from 1 September until a date to be determined. In addition, Article 38(2) provides that the buying-in price of wine delivered for preventive distillation is to be 65% of the guide price. Participation by producers in the preventive distillation procedure is voluntary.

cle 41). [6] Those measures are to be adopted by the Commission under the conditions and the procedure laid down in Articles 38, 39 and 41 respectively.

8. Within that regulatory context, it is necessary to define more precisely the legislative framework governing the compulsory distillation of table wines.

9. First of all, it should be noted that the withdrawal from the market of certain quantities of wine [7] in order for them to be distilled is intended to support prices. At the same time, however, that measure is designed to manage, or rather to absorb, surpluses and to deal with serious instability in the market. Producers may deduct quantities of wine sent for preventive distillation from the quantity which must be sent for compulsory distillation.

10. In short, an analysis of Article 39 of Regulation No 822/87 reveals four successive stages in the process of compulsory distillation and shows that the Commission has a large measure of discretion. To be specific: (a) the Commission decides on compulsory distillation if the market is in a state of serious imbalance; (b) the Commission lays down the total quantity to be delivered for compulsory distillation in order to ensure the absorption/elimination of surpluses and the restoration of normal market conditions; (c) the total quantity to be distilled is allocated among the Community's various production regions, each of which corresponds to a Member State; and, lastly, (d) the quantity to be distilled assigned to each production region is allocated among the producers in that region.

11. In more detail, Article 39(1) of Regulation No 822/87 provides:

'Where, in respect of a given wine year, the market in table wine and wine suitable for yielding table wine is in a state of serious imbalance, compulsory distillation of table wine shall be decided on.

A state of serious imbalance as referred to in the first subparagraph shall be deemed to exist where:

(a) availabilities recorded at the beginning of the wine year exceed the level of normal utilisation by more than four months' supply, or

6 — Under Article 41(1) of Regulation No 822/87, in wine years during which compulsory distillation is decided on such distillation is to start from the time the relevant measure is put into effect. If during such a wine year the situation on the market in table wine so requires any other appropriate measure may be decided on. Moreover, under Article 41(1) and (2) support distillation may be carried out not only in parallel with compulsory distillation but also if compulsory distillation has not been decided on. However, it may not exceed 6 200 000 hectolitres unless the Council decides otherwise. The price paid to wine producers is to be 82% of the guide price (Article 41(6) in conjunction with the first paragraph of Article 29 of Regulation No 822/87), that is to say it is a much better price than that paid in the case of compulsory distillation.

7 — Generally those are wines of inferior quality, although not necessarily so.

(b) production exceeds the level of normal utilisation by more than 9%, or

(c) the weighted average of representative prices for all types of table wine remains below 82% of the guide price from the beginning of a wine year for a period to be determined'. [8]

12. Article 39(2), (3), [9] (4), [10] and (5) reads as follows:

'2. The Commission shall fix the quantities that are to be delivered for compulsory distillation to eliminate production surpluses and thus restore a normal market situation, in particular as regards the levels of foreseeable availabilities at the end of a wine year and prices.

3. The total quantity to be distilled, determined in accordance with paragraph 2, shall be shared between the various wine-growing regions of the Community, grouped together by Member State.

The quantity for distillation for each wine-growing region shall be proportional to the difference between:

— on the one hand, the production of table wine and of products upstream of table wine to be determined, obtained in the region and in the year in question, and

— on the other hand, a uniform percentage of the average quantity of table wine and of products upstream of table wine to be determined, obtained in the region in question over three consecutive reference wine years.

Until the end of the 1993/94 wine year:

— the uniform percentage shall be 85,

8 — Under Article 27(2), (3) and (4) of Regulation No 822/87, a guide price is fixed for each type of table wine before 1 August for each marketing year. The guide price is fixed on the basis of the average of prices recorded for the type of wine in question during the two marketing years preceding the date of fixing and on the basis of price trends during the current marketing year. Finally, the guide price is fixed at the production stage and is expressed, according to the type of wine, either in ECU per % volume/hl or in ECU per hl.

9 — Article 39(3) as amended by Article 1(5) of Council Regulation (EEC) No 1566/93 of 14 June 1993 amending Regulation (EEC) No 822/87 on the common organisation of the market in wine (OJ 1993 L 154, p. 39).

10 — Article 39(4) as replaced by Article 1(1) of Council Regulation (EEC) No 1441/88 of 24 May 1988 amending Regulation (EEC) No 822/87 on the common organisation of the market in wine (OJ 1988 L 132, p. 1).

— the consecutive reference years shall be 1981/82, 1982/83 and 1983/84.

...

4. The quantity for distillation determined in accordance with paragraph 3 shall be shared between table wine producers in each wine-growing region.

For producers subject to the obligation to distil, the quantity for distillation shall be equal to a percentage to be determined of their production, as indicated in their production declarations, of table wine and of products upstream of table wine to be determined.

This percentage shall be obtained from a progressive scale based on the yield per hectare and may vary between regions according to yields obtained in the past.

Except for the regions where yield is substantially lower than the average yield in the Community, this percentage:

— shall be zero for yields at least 70% below the average yield in the region in question for table wine,

— may not be lower than 75% for yields higher than 200% of the average yield of the area in question for table wine.

The percentage of average yield referred to in the first indent of the fourth subparagraph may be modified under the procedure laid down in Article 83 depending on the volume of production and the total quantity to be distilled in the Community and in each wine-growing region.

The quantity of table wine to be delivered for distillation by each producer shall be equal to that determined in accordance with the third, fourth and fifth subparagraphs; however, the producer may deduct from that quantity, in whole or in part, the quantity of table wine or wine suitable for yielding table wine delivered for distillation as referred to in Article 38.

5. Member States shall notify the Commission of the quantities of table wine produced in each wine-growing region delimited in accordance with paragraph 9, broken down by yield class. These data shall be compiled on the basis of the production declarations referred to in Article 3.

These notifications shall serve as a basis for:

(a) setting the total quantity for distillation in the Community;

(b) allocating this quantity among the wine-growing regions referred to in paragraph 3;

(c) determining, in cooperation with the Member States concerned, the percentage to be applied to the production of each producer subject to the obligation to distil in order to attain the distillation volume laid down for each region.

...'

13. The first subparagraph of Article 39(11) [11] states: 'If, during the 1987/88 to 1993/94 wine years, difficulties likely to jeopardise the execution or balanced application of the compulsory distillation operation referred to in paragraph 1 occur, the measures necessary in order to ensure effective application of the distillation scheme shall be adopted in accordance with the procedure laid down in Article 83.'

The second subparagraph of Article 39(11) [12] establishes the limits of the power accorded in principle to the Commission for the adoption of the measures necessary in order to ensure effective application of the compulsory distillation scheme. Specifically, it provides:

'Such measures:

(a) may relate only to the provisions contained in this Article to the exclusion of those relating to:

— the apportionment between the various regions of production,

11 — As replaced by Article 1(5) of Regulation No 1566/93.

12 — As replaced by Article 1(2)(b) of Council Regulation (EEC) No 1972/87 of 2 July 1987 amending Regulation (EEC) No 822/87 on the common organisation of the market in wine (OJ 1987 L 184, p. 26).

— the reference years,

— the price to be paid for the distilled wine;

(b) may contain an adjustment to the percentage of 85, referred to in the first indent of the third subparagraph of paragraph 3, only in so far as, for a given wine year, the ratio between the quantities available and normal consumption of table wine differs significantly from that of the reference years referred to in the third subparagraph of paragraph 3'.

14. Article 39(9) of Regulation No 822/87 provides:

'The following shall be adopted in accordance with the procedure laid down in Article 83:

...

— the decision to carry out distillation referred to in paragraph 1,

— the criteria for applying paragraph 2 and the total quantity to be distilled referred to in that paragraph,

— the criteria for delimiting wine-growing regions, grouped together by Member State as referred to in paragraph 3, and the delimitation of those regions,

— the fixing of the uniform percentage and the consecutive reference years, and the allocation of the quantities to be distilled among the regions grouped together by Member State, referred to in paragraph 3,

— the progressive scale and the percentages referred to in paragraph 4,

...'.

15. Lastly, under Article 79(1) of Regulation No 822/87 the Member States are to take all necessary measures to ensure compliance with Community provisions in the wine sector.

(2) Commission regulations

(a) Commission Regulations Nos 2396/84 and 3929/87

16. Article 1(1) of Commission Regulation (EEC) No 2396/84 of 20 August 1984 laying down detailed rules for drawing up the forward estimate in the wine sector [13] provides:

'The forward estimate shall be drawn up by the Commission on the basis of all the information available, in particular:

— information forwarded by the Member States,

— any other information which it considers reliable.'

13 — OJ 1984 L 224, p. 14. Regulation No 2396/84 is cited as amended by Commission Regulation (EEC) No 3643/87 of 3 December 1987 (OJ 1987 L 342, p. 11) and by Commission Regulation (EEC) No 3373/89 of 9 November 1989 (OJ 1989 L 325, p. 19).

17. Article 1(2) [14] and (3) provides:

'2. For the purposes of the first indent of paragraph 1, the Member States shall communicate to the Commission, not later than 30 November of the wine-growing year, at least the information referred to in ... the Annex hereto.

...

3. With regard to the information referred to in the second indent of paragraph 1, use shall be made of all sources of information available, and in particular:

(a) publications relating to production and distribution in the Member States,

(b) the trade organisations representing production and distribution in the Member States, and in particular those represented on the Advisory Committee on Wine.'

14 — As supplemented by Article 1 of Regulation No 3373/89.

The annex to Regulation No 2396/84 [15] provides for notification to the Commission of: (a) the data for drawing up the forward estimate, (b) the distillation forecasts and (c) the intra-Community trade forecasts.

18. Article 2 of Regulation No 2396/84 states:

'The information referred to in the second indent of Article 1(1) shall be used only where a significant discrepancy likely to compromise the efficient management of the wine market is found to exist between the figures provided by the Member States as referred to in Article 1(2) and the said information'.

19. Article 6(2) of Commission Regulation (EEC) No 3929/87 of 17 December 1987 on harvest, production and stock declarations relating to wine-sector products [16] provides:

'2. Member States shall estimate the yield per hectare in respect of the table wine production obtained on their territory. They shall communicate this estimate to the Commission before 20 January according to the following classes of yield ...'.

20. Those yield classes in hectolitres per hectare (hereinafter 'hl/ha') are defined in Article 6(2) itself. [17]

21. Article 8(3) of Regulation No 3929/87 provides that, before 15 February, Member States are to notify the Commission of the final results of the breakdown of production by class of yield as referred to in Article 6(2).

(b) Commission Regulation No 441/88

22. Article 3 of Commission Regulation (EEC) No 441/88 of 17 February 1988 laying down detailed rules for applying compulsory distillation as referred to in Article 39 of Council Regulation (EEC) No 822/87 [18] provides:

'When the total quantity of table wine subject to compulsory distillation is being fixed,

15 — As replaced by the annex to Regulation No 3643/87.

16 — OJ 1987 L 369, p. 59.

17 — The yield classes are as follows:
— not more than 45 hl/ha;
— more than 45 hl/ha but not more than 70 hl/ha;
— more than 70 hl/ha but not more than 90 hl/ha;
— more than 90 hl/ha but not more than 110 hl/ha;
— more than 110 hl/ha but not more than 140 hl/ha;
— more than 140 hl/ha but not more than 200 hl/ha;
— more than 200 hl/ha.

18 — OJ 1988 L 45, p. 15.

account shall be taken of the need to ensure a level of foreseeable end-of-year stocks which will guarantee that the availabilities for the following wine year will in any case be sufficient to cover normal utilisation.'

23. Article 4(1) of Regulation No 441/88 states:

'The production regions referred to in Article 39(3) of Regulation (EEC) No 822/87 shall be designated to take account, on the one hand, of production and climatic conditions and, on the other, of the differences existing between Member States in terms of administrative structure and legal requirements, particularly as regards the internal organisation of cooperative wineries and producer groups.

The said regions must coincide with administrative units larger than communes and comprise administrative units on which statistics are available for the reference wine years referred to in the second indent of the second subparagraph of Article 39(3) of Regulation No 822/87.'

24. Article 4(2) [19] defines the Community production regions as follows: Region 1 corresponds to Germany, Region 2 to Luxembourg, Region 3 to France, Region 4 to Italy, Region 5 to Greece, Region 6 to Spain and Region 7 to Portugal.

25. Article 4(3) [20] provides:

'Average production of table wine and products upstream of table wine in the regions referred to in paragraph 2 in the three consecutive wine years 1981/82, 1982/83 and 1983/84 was as follows:

— Region 1:	1 341 700 hl
— Region 2:	57 300 hl
— Region 3:	40 182 000 hl
— Region 4:	64 163 000 hl
— Region 5:	4 632 000 hl
— Region 6:	27 500 000 hl
— Region 7:	7 250 000 hl.'

19 — As amended by Article 1(1) of Commission Regulation (EEC) No 3699/92 of 21 December 1992 amending Regulation (EEC) No 441/88 laying down detailed rules for applying compulsory distillation as referred to in Article 39 of Council Regulation (EEC) No 822/87 (OJ 1992 L 374, p. 54).

20 — As amended by Article 1(2) of Regulation No 3699/92.

26. Article 12(4) of Regulation No 441/88 provides:

'4. Deliveries of table wine must be made not later than:

— 31 July if delivery is made to a distillery,

— 15 July if delivery is made to a fortifier of wine for distillation.

Deliveries may be made in the fortnight after the above dates. In that case the purchase price for the quantities concerned shall be reduced by an amount equal to 50% of the aid fixed for the wine year in question. Both the aid and the price of the alcohol which is produced and delivered to the intervention agency shall be reduced by the same amount.'

27. The first subparagraph of Article 12(5) states that the distillation operations may not be carried out after 31 August.

28. The first paragraph of Article 23 states that expiry of the time-limits referred to, *inter alia*, in Article 12(4) and in the first subparagraph of Article 12(5) is to have no bearing whatsoever on the accomplishment of the requirement that the quantities due from each producer be distilled. [21]

(c) Commission Regulation No 343/94

29. It was within the above framework that Commission Regulation (EC) No 343/94 of 15 February 1994 opening compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87 and derogating for the 1993/94 wine year from certain detailed rules for the application thereof [22] was adopted. [23]

21 — The second paragraph of Article 23 states: 'After expiry of the said time-limits, the purchase price for the quantities delivered and the price of the alcohol which is produced from those quantities and which is delivered to the intervention agency shall be reduced by an amount equal to the aid laid down for that distillation operation in respect of neutral spirits. No aid shall be paid for distillation products which are not delivered to the intervention agency.'

22 — OJ 1994 L 44, p. 9.

23 — The preventive distillation of certain quantities of wine for the 1993/94 wine year was decided on in Commission Regulation (EEC) No 2094/93 of 28 July 1993 introducing preventive distillation as provided for in Article 38 of Regulation (EEC) No 822/87 for the 1993/94 wine year (OJ 1993 L 190, p. 23). Article 38(2) of Regulation No 822/87 provides that the buying-in price for wine delivered for preventive distillation is to be 65% of the guide price.

30. Article 1 of Regulation No 343/94 provides:

'1. Distillation as provided for in Article 39(1) of Regulation (EEC) No 822/87 is hereby adopted for the 1993/94 wine year.

2. The total quantity of table wine to be distilled shall be 18 200 000 hectolitres.

3. The quantities to be distilled in the regions as referred to in Article 4(2) of Commission Regulation (EEC) No 441/88 shall be as follows:

— Region 1:	—
— Region 2:	—
— Region 3:	2 550 000 hectolitres,
— Region 4:	12 150 000 hectolitres,
— Region 5:	500 000 hectolitres,
— Region 6:	3 000 000 hectolitres,
— Region 7:	—

...'. [24]

(d) Commission Regulations Nos 465/94 and 610/94

31. Article 1 of Commission Regulation (EC) No 465/94 of 1 March 1994 fixing for the 1993/94 wine year the percentages of table wine production to be delivered for compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87, in Regions 3 and 6 [25] provides:

'1. Pursuant to Article 5(1) of Regulation (EEC) No 441/88, production from the 1993/94 harvest shall be broken down into the following yield classes ... [Regions 3 and 6].

2. The average yield in production Region 3 shall be 62.7 hectolitres per hectare and in Region 6 it shall be 26.2 hectolitres per hectare.'

24 — The compulsory distillation price constitutes a deterrent for producers. It is 50% of the guide price and may even be less, depending on the total quantity to be distilled; under Article 4 of Regulation No 343/94 the buying-in price for table wine to be delivered for compulsory distillation was set at ECU 0.83 per % vol alcohol per hectolitre (% vol/hl).

25 — OJ 1994 L 58, p. 2.

32. Article 2 of Regulation No 465/94 states:

'The quantity that each producer shall be required to deliver for distillation shall be determined by multiplying the quantity referred to in Article 6 of Regulation (EEC) No 441/88 by the percentage shown in the table in the Annex which corresponds to the yield determined in accordance with Article 7 of the said Regulation ...'.

33. Commission Regulation (EC) No 610/94 of 18 March 1994 amending Regulation No 465/94 [26] was adopted after Italy had notified the table wine production figures and the breakdown of that production by yield class, which made it necessary to set for Region 4 the percentages of production which each liable producer had to deliver for distillation.

34. Article 1 of Regulation No 610/94 provides:

'Regulation (EC) No 465/94 is hereby amended as follows:

(1) in the title, the words "in Regions 3 and 6" are deleted;

(2) in Article 1(1), the following point (c) is inserted:

"(c) Region 4:

Production obtained with a yield, expressed in hectolitres per hectare:

— not exceeding 45: 1 887 143 hectolitres

— of more than 45, but not more than 70: 8 394 081 hectolitres

— of more than 70, but not more than 90: 11 843 922 hectolitres

— of more than 90, but not more than 110: 10 209 474 hectolitres

— of more than 110, but not more than 125: 4 853 825 hectolitres

— of more than 125, but not more than 140: 2 002 827 hectolitres

— of more than 140, but not more than 170: 1 261 827 hectolitres

— of more than 170, but not more than 200: 195 041 hectolitres

— exceeding 200: 228 774 hectolitres."

26 — OJ 1994 L 77, p. 12.

(3) in Article 1(2), the following subparagraph is added:

"The average yield in Region 4 shall be 77 hectolitres per hectare.";

(4) the Annex is replaced by the Annex hereto.'

35. The annex to which Article 2 of Regulation No 465/94 refers, as contained in Regulation No 610/94, sets out in detail the way in which 'the quantity that each producer shall be required to deliver for distillation' is to be determined. That quantity is determined by applying to the volume produced by each producer of table wine [27] the percentage given in the table in the annex, which corresponds to the yield per hectare [28] (hl/ha). [29]

(e) Commission Regulations Nos 1960/94 and 3151/94

36. By Regulation (EC) No 1960/94 of 27 July 1994 derogating from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation and support distillation in respect of the 1993/94 wine year, [30] the Commission extended [31] until 27 August 1994 the time-limit for delivering table wine to a distillery and until 20 September 1994 the time-limit which had been laid down for distillation operations.

37. In addition, Article 1(1) of Commission Regulation (EC) No 3151/94 of 21 December 1994 introducing a further derogation from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation in respect of the 1993/94 wine year [32] — whose wording was subsequently subject to a corrigendum — [33] extended [34] to 140 days after 11 September 1994, that is to say to 29 January 1995, the time-limit for the delivery of wine for compulsory distillation applicable in the 1993/94 wine year.

27 — That volume is determined by Article 6 of Regulation No 441/88.

28 — That yield is determined by Article 7 of Regulation No 441/88.

29 — For example, that annex shows that in Region 4, Italy, when the yield is 50 hl/ha, the percentage is 5.8%, which rises to 40.1% where the yield is 100 hl/ha and to 87% where the yield is 200 hl/ha, reaching 89% where the yield is 300 hl/ha.

30 — OJ 1994 L 198, p. 96.

31 — By way of derogation from the first indent of Article 12(4) and Article 12(5) of Regulation No 441/88.

32 — OJ 1994 L 332, p. 32.

33 — OJ 1994 L 341, p. 76.

34 — By way of derogation from Regulation No 343/94 and from the second subparagraph of Article 12(4) and Article 12(5) of Regulation No 441/88.

B — *National provisions*

38. Article 4(11) of the Italian Decree-Law of 7 September 1987, which was ratified, following amendment, by the Law of 4 November 1987, provides for the imposition of an administrative fine in the event of failure to comply with the obligation to distil contained in Article 39 of Regulation No 822/87 and in the other Community legislation implementing that provision.

III — Facts

39. Galileo Zaninotto is a wine producer in the area of Treviso. The competent Italian administrative authority, the Ispettorato Centrale Repressione Frodi — Ufficio di Conegliano — Ministero delle Risorse Agricole, Alimentari e Forestali (Conegliano Office of the Central Inspectorate for the Prevention of Fraud in the Ministry of Agriculture, Food and Forest Resources), imposed on him, by Order No 70 of 15 February 1996, the fine [35] provided for in Article 4(11) of the Decree-Law of 7 September 1987 [36] in respect of infringements of Article 39 of Regulation No 822/87, on the ground that he had failed to comply with his obligations regarding the compulsory distillation of table wine in the 1993/94 wine year. More specifically, he had failed to deliver 379.47 hl of wine for compulsory distillation as he was required to do under the Community legislation.

40. By application lodged on 30 April 1996 Mr Zaninotto brought proceedings, in due time and form, before the Pretore (Magistrate) of Conegliano, in which he contested the order imposing the fine on him. The defendant authority contended that the application should be dismissed.

IV — The questions

41. In the case before it, the Pretura Circondariale di Treviso, Sezione Distaccata di Conegliano, has referred for a preliminary ruling seven questions concerning the validity of various Community provisions governing compulsory distillation, [37] asking:

(1) whether the fourth indent of Article 1(3) of Regulation No 343/94, and Article

35 — According to Mr Zaninotto the fine was ITL 18 900 000.

36 — Ratified by the Law of 4 November 1987.

37 — The provisions concerning the quantity of table wine to be delivered for compulsory distillation in Region 4, that is to say Italy, have been the subject of two applications for annulment (see the Orders in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941 and in Case T-6/95 R *Cantine dei Colli Berici coop. arl* v *Commission* [1995] ECR II-647) which were dismissed by the Court of First Instance. In Case T-183/94 the application was held to be inadmissible on the ground that the applicants were not individually concerned by the contested measures.

1(1)(c), the second subparagraph of Article 1(2), and Article 1(3) (and the annex, to the extent that it concerns Region 4) of Regulation No 465/94, as amended by Regulation No 610/94 so far as concerns Region 4, are invalid because they contravene the prohibition against discrimination, laid down by Article 40(3) of the EC Treaty, and Article 23 of Regulation No 441/88;

(2) whether the fourth indent of Article 1(3) of Regulation No 343/94 and Article 1(1), (2) and (3) of Regulation No 465/94, as amended by Regulation No 610/94, are invalid because they contravene the principle of the protection of legitimate expectations;

(3) whether the fourth indent of Article 1(3) of Regulation No 343/94, and Article 1(1), (2) and (3) of Regulation No 465/94, as amended by Regulation No 610/94, are invalid because they infringe Article 31 of Regulation No 822/87 and their enactment is *ultra vires* because an essential precondition was not met;

(4) whether Article 39(4) of Regulation No 822/87 is invalid because it contravenes the principle of proportionality in so far as it prescribes, in the case of each producer subject to the obligation, the volume to be distilled and is a wholly inappropriate means of attaining the objective sought;

(5) whether the fourth indent of Article 4(2) of Regulation No 441/88 is invalid;

(6) whether Article 1(1) of Regulation No 3151/94 is invalid because it contravenes Article 39(1) of Regulation No 822/87 and because an essential precondition was not met;

(7) whether Article 1(1) of Regulation No 3151/94 is invalid because it contravenes the principle of proportionality with which Community policy should be consistent.

V — Admissibility of the questions

A — *General*

42. First of all, as the Commission observes, the order for reference is very sparing with the facts which might establish whether the questions on the validity of the provisions cited above may usefully be answered.

43. It thus fails to state expressly whether Mr Zaninotto complied with the obligation to distil during the 1992/93 wine year, whether he sold his entire production from the 1992/93 and 1993/94 wine years, as he himself states, and whether his individual production was below or above the average yield for the reference region. That factual information would make it easier to understand more fully the questions referred to the Court of Justice and would assist the latter in providing the national court with the necessary answers.

44. However, the Court has acknowledged that, in the context of the cooperation between itself and the national courts which is provided for in Article 177 of the Treaty, 'the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess, having regard to the particular features of the case, whether a preliminary ruling is necessary to enable it to give judgment'. [38]

45. The Court has also stated on many occasions [39] that the spirit of harmonious collaboration which must prevail in the preliminary ruling procedure requires the national court, for its part, to have regard to the function assigned to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions. [40]

46. Despite all the reservations engendered by the condensed way in which the national court has set out the facts, the Court must examine those facts. First, the order for reference provides a sufficiently clear description of the legal context of the case. Secondly, the facts as presented by the national court have not been disputed. Lastly, the Court of Justice has held that it may refuse to give a preliminary ruling only in exceptional circumstances where it is obvious that the provision of Community law whose interpretation is sought or whose validity is to be reviewed bears no relation to the subject-matter of the main action. [41] However, I do not consider that to be the case here, nor is there a risk of giving an answer to a completely hypothetical question.

38 — See, for example, Case 83/78 *Pigs Marketing Board* v *Redmond* [1978] ECR 2347, paragraph 25, and Case C-343/90 *Lourenço Dias* v *Director da Alfândega do Porto* [1992] ECR I-4673, paragraph 15.

39 — See Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, paragraph 21, Case C-231/89 *Gmurzynska-Bscher* v *Oberfinanzdirektion Köln* [1990] ECR I-4003, paragraph 18, Case C-346/93 *Kleinwort Benson* v *City of Glasgow District Council* [1995] ECR I-615, paragraph 24, and Case C-415/93 *Union Royal Belge des Sociétés de Football Association and Others* v *Bosman and Others* [1995] ECR I-4921, paragraph 60.

40 — See *Foglia*, cited above, paragraphs 18 and 20, Case C-314/96 *Djabali* v *Caisse d'Allocations Familiales de l'Essonne* [1998] ECR I-1149, paragraph 19, and Case 149/82 *Robards* v *Insurance Officer* [1983] ECR 171, paragraph 19. See also Joined Cases C-422/93, C-423/93 and C-424/93 *Zabala Erasun and Others* v *Instituto Nacional de Empleo* [1995] ECR I-1567, paragraph 29.

41 — See, for example, Case 126/80 *Salonia* v *Poidomani and Giglio* [1981] ECR 1563, paragraph 6, Case C-368/89 *Crispoltoni* v *Fattoria Autonoma Tabacchi di Città di Castello* [1991] ECR I-3695, paragraph 11, Case C-186/90 *Durighello* v *INPS* [1991] ECR I-5773, paragraph 9, Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia and Others* v *Ente Nazionale Risi* [1994] ECR I-711, paragraph 17, Case C-62/93 *BP Supergas* v *Greek State* [1995] ECR I-1883, paragraph 10, Case C-143/94 *Furlanis* v *ANAS and Itinera* [1995] ECR I-3633, paragraph 12, Case C-472/93 *Spano and Others* v *Fiat Geotech and Fiat Hitachi* [1995] ECR I-4321, paragraph 15, and, finally, *Bosman*, cited above in footnote 39 (paragraph 61).

B — *Admissibility of Questions 6 and 7 in particular*

47. As regards the admissibility of the sixth and seventh questions in particular, the Commission raises the issue of whether Regulation No 3151/94, which extended until 29 January 1995 the time-limit for delivering wine for compulsory distillation in respect of the 1993/94 wine year, could have affected Mr Zaninotto. He was fined for failure to comply with the obligation to distil in respect of the 1993/94 wine year, although the extension of the time-limit gave the producers concerned, including Mr Zaninotto, a further opportunity to carry out distillation and thus escape that penalty.

48. Here too, the order for reference fails to provide sufficient information to explain how annulment of Regulation No 3151/94 might help the national court to settle the case before it. Despite my particular reservations as to the usefulness of answers to those two questions for disposing of the main proceedings I shall examine them in case the Court considers them to be admissible. After all, as I have stated above, 'the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess, having regard to the particular features of the case, whether a preliminary ruling is necessary to enable it to give judgment'. [42] Moreover, the answers which the national court is seeking do not appear to be totally irrelevant as regards the outcome of the proceedings before it, even if annulment of Article 1(1) of Regulation No 3151/94 alone would ultimately make Mr Zaninotto's position worse, since he would still be bound by the obligation to deliver wine for distillation.

VI — Answers to the questions

49. I consider that the issues relating to the validity of the disputed Community provisions are best analysed by grouping questions together. I shall begin by dealing with the first and second questions, since they relate to the provisions setting the total quantity of wine to be distilled by Italy in the 1993/94 wine year (A). Next, I shall consider the third and fourth questions, which relate to the criterion of yield per hectare (B). I shall then turn to the fifth question concerning the designation of Italy as a single region (C) and, lastly, I shall come to the sixth and seventh questions, relating to the extension of the time-limit within which wine producers had to deliver the quantities subject to compulsory distillation (D).

42 — See, for example, *Pigs Marketing Board*, paragraph 25, and *Lourenço Dias*, paragraph 15, cited above in footnote 38.

A — *Questions 1 and 2: determination of the total quantity of wine to be distilled by Italy in the 1993/94 wine year*

50. The first two questions referred by the national court relate to the validity of the fourth indent of Article 1(3) of Regulation No 343/94, and of Article 1(1)(c), the second subparagraph of Article 1(2), and Article 1(3) (and the annex to the extent that it concerns Region 4) of Regulation No 465/94, as amended by Regulation No 610/94 so far as concerns Region 4 (Italy).

51. Those provisions concern the determination of the total quantity of wine to be distilled in Italy in the 1993/94 wine year, namely 12 150 000 hl, of the region's average yield (77 hl/ha), and of the quantity which each producer was required to deliver for distillation.

52. It should be noted from the very outset that Article 1 of Regulation No 465/94, as amended by Regulation No 610/94, has no third paragraph. The national court is perhaps referring to Article 1(3) of Regulation No 610/94, but that provision contains the second subparagraph of Article 1(2) of Regulation No 465/94. We are nevertheless not precluded from examining the validity of the other provisions, about which the national court properly asks.

(1) Question 1: infringement of the prohibition of discrimination

(a) Issues raised

53. The national court considers that the abovementioned provisions contravene the prohibition of discrimination laid down in Article 40(3) of the Treaty and Article 23 of Regulation No 441/88 for three reasons:

(a) In the 1993/94 wine year the disputed provisions meant that the obligation to distil was apportioned unequally among the Member States concerned, the burden on Italy ultimately being particularly punitive. Out of a total 18 200 000 hl of wine to be distilled in the Community, which comprises seven production regions, two thirds (12 150 000 hl) were allocated to Italy, whose production was 40 800 000 hl. In Region 3 (France), whose production was 20 800 000 hl, the quantity for compulsory distillation was

2 550 000 hl.[43] In other words, Italian producers were obliged to distil more wine than the producers in other Member States whose production conditions are similar.

(b) In the 1993/94 wine year the provisions in question led to discrimination against Italian producers since the total quantity of 12 150 000 hl allocated to Italy was set by the Commission on the basis of wholly inaccurate data provided by the Italian Government. The actual stocks of table wine at the end of the 1992/93 wine year (31 August 1993) exceeded the estimates for the end of that year by 80%. That disparity was much greater than those recorded in the other production regions.

(c) In the 1993/94 wine year the provisions in question gave rise to discrimination against Italian wine producers who were subject to the obligation to distil, by imposing on them the burden of quantities of table wine which should have been distilled, but were not, by other Italian producers during the 1992/93 wine year. That explains, moreover, why Regulation No 610/94 fixed the percentages of table wine to be distilled in the 1993/94 wine year at a level higher than they would have been if certain producers had not failed to comply with their obligations during the preceding wine year.

54. Clarification is required at the very outset on one point. It is difficult to see to what extent there can be a conflict between the contested legislation and Article 23 of Regulation No 441/88, which provides that expiry of the time-limits for delivering wine for distillation (15 or 31 July each year) 'shall have no bearing whatsoever on the accomplishment of the requirement that the quantities due from each producer be distilled'. That means, in my opinion, that the quantities to be distilled must actually be delivered for distillation even if the time-limits laid down have expired.

55. Article 23 of Regulation No 441/88 may therefore usefully be relied on in order to answer the third part of the first question referred by the national court inasmuch as it supports the obligation to distil; that is to say, as the Commission rightly states (paragraph 8 of its written observations), it is consistent and not incompatible with the obligation imposed in respect of the 1993/94 wine year to distil quantities which should have been distilled during the 1992/93 wine year.

43 — The figure of 2 250 000 hl referred to by the national court is clearly a slip.

(b) Case-law of the Court

56. The Court has consistently held [44] that in accordance with the second subparagraph of Article 40(3) of the Treaty the common organisation of the agricultural markets is to exclude any discrimination between producers or consumers within the Community and that 'that prohibition on discrimination is only a specific expression of the general principle of equal treatment in Community law, which means that comparable situations are not to be treated differently and that different situations are not to be treated alike unless such treatment is objectively justified'. In other words, according to that case-law, 'there is discrimination not only when comparable situations are treated differently but also when different situations are treated in the same way, unless such treatment is objectively justified'. [45]

57. On the basis of that case-law I will have to examine whether Italian wine producers were discriminated against at the various stages in the procedure followed by the Commission for fixing the quantities to be distilled.

(c) The quantity Italy was required to distil

58. The Italian Government considers (paragraph 9 of its written observations) that the Commission seriously misused its powers under Regulation No 822/87 in that it fixed the quantity to be distilled without applying the same percentage to the various Member States and relied on criteria which are not provided for in Article 39 of Regulation No 822/87.

59. In addition, the Italian Government asserts that the preamble to Regulation No 343/94 makes no reference to the criteria employed by the Commission in allocating among the various regions the quantities to be delivered for compulsory distillation.

60. The Italian Government considers (paragraph 11 of its written observations) that, in view of the substantial quantities which the Commission required to be distilled in the Italian winegrowing areas, the progressive scale is different from that adopted by the Commission for the other Member States. According to the Italian Government the effect is that, as is apparent from the scale laid down in the annex to Regulation No 610/94, even if producers have the same yield per hectare they are subject to different requirements depending on their region of origin, contrary to the second subparagraph of Article 40(3) and Article 6 (formerly Article 7) of the Treaty.

44 — See, for example, Case C-311/90 *Hierl* v *Hauptzollamt Regensburg* [1992] ECR I-2061, paragraph 18; see also Case 203/86 *Spain* v *Council* [1988] ECR 4563, paragraph 10, Case 84/87 *Erpelding* v *Secrétaire d'État à l'Agriculture et à la Viticulture* [1988] ECR 2647, paragraph 29, Joined Cases C-267/88 to C-285/88 *Wuidart and Others* v *Laiterie Coopérative Eupenoise* [1990] ECR I-435, paragraph 13, and Case C-63/93 *Duff and Others* v *Minister for Agriculture and Food, Ireland, and the Attorney General* [1996] ECR I-569, paragraph 26.

45 — See Joined Cases C-133/93, C-300/93 and C-362/93 *Crispoltoni and Others* v *Fattoria Autonoma Tabacchi and Donatab* [1994] ECR I-4863, paragraph 51, and Case 106/83 *Sermide* v *Cassa Conguaglio Zucchero* [1984] ECR 4209, paragraph 28.

61. Mr Zaninotto contends that the fact that compulsory distillation was not resorted to in the three wine years following 1993/94 confirmed that the obligation to distil 12 000 000 hl (of which only 9 000 000 hl were ultimately distilled) was manifestly out of proportion to the actual situation on the Italian wine market, which could not be held responsible for that surplus; that requirement was, moreover, excessively unfavourable to Italian wine producers.

(i) Determination of the total quantity for distillation

62. Firstly, as regards the validity of the fourth indent of Article 1(3) of Regulation No 343/94 in so far as it lays down 12 150 000 hl as the quantity to be distilled in Region 4, that is to say in Italy, for the 1993/94 wine year, it should be noted that the Commission adopted that regulation, implementing Council Regulation No 822/87, on the basis of a set of objective data. The first recital in the preamble to Regulation No 343/94 states: 'The data available at present to the Commission, and in particular those in the forward estimate for the 1993/94 wine year, show that a feature of the current year is an imbalance on the market for table wine and wine suitable for yielding table wine; ... the conditions laid down in Article 39(1) of Regulation (EEC) No 822/87 for initiating compulsory distillation are therefore fulfilled'.

63. Furthermore, the second recital in the preamble to the same regulation states: 'In view of the prices and the desirable level of availability at the end of the year, the distillation of 18 200 000 hectolitres of table wine appears necessary in the Community; ... that quantity is based on the forward estimate to take account of the unbalanced situation, characterised in particular by stocks carried over from one wine year to the next, which are higher than the estimates used as the basis for establishing the financial data for the wine year'.

64. Next, as regards Regulation No 465/94 and Regulation No 610/94 amending Regulation No 465/94, the fourth recital in the preamble to the former [46] states: 'Article 39(4) of Regulation (EEC) No 822/87 provides that, in the case of producers who are required to distil, the quantity to be distilled must equal a percentage to be fixed of their table wine production, such percentage being obtained from a graduated scale based on yield per hectare; ... the percentages of the production of each such producer which must be delivered for distillation should therefore be fixed; ... while being based on objective criteria, those percentages must be adapted to the situation of each region ...; ... the scale used must allow a quantity of table wine corresponding to the obligation provided for in Article 1(3) of Regulation (EC) No 343/94 to be deducted from a region's quantity; ... the yield classes should accordingly set out only the quantities covered by the production declarations, on which the scale is based'.

46 — See also the third and fourth recitals in the preamble to Regulation No 610/94, whose content is similar.

65. In addition, the fourth recital in the preamble to Regulation No 610/94 states: '... on the basis of the communication by Italy of the table wine production figures broken down by yield class, the percentages of the production of each producer which must be delivered for distillation should be fixed for Region 4; ... the scale in question must be incremental, thus penalising the highest yields ...'.

66. It is clear from Regulation No 465/94 in conjunction with Regulation No 610/94, viewed in the light of the recitals in their preambles, that in determining, first, the volume of production on the basis of the yield in hectolitres per hectare (hl/ha) for Region 4, that is to say Italy, and, secondly, the average yield per hectare of Region 4, the Commission relied on full and objective data notified to it by the authorities of that Member State concerning the production of table wine and the breakdown of that production into the various yield classes. The figures were calculated on the basis, on the one hand, of all the Community data and, on the other, of all the data relating to Italy as a whole.

67. More specifically, in its answer to a written question put to it by the Court, the Commission explained the procedure for fixing the quantity of table wine which Italy had to deliver for compulsory distillation. It stated that in the 1993/94 wine year it calculated the quantity which it considered to be surplus and allocated it between the two forms of distillation (compulsory and support), in accordance with Articles 39 and 41 of Council Regulation No 822/87 and with Commission Regulation No 441/88.

68. The Commission's explanation shows, in my view, that the procedure followed was correct and that there was no discrimination against Italy and Italian producers, nor against the other Member States and their producers.

69. As regards determining the surplus quantity of table wine, the Community's forward estimate for the 1993/94 wine year [47] shows total production amounting to 98 610 000 hl, of which 91 365 000 hl were intended for winemaking. [48] In addition, according to the Commission: (a) the total production of table wine, net of wine deliveries and losses, was estimated to be 87 385 000 hl; (b) normal utilisation (human consumption, industrial uses and import-export balance) was estimated, in accordance with Article 1 of Regulation No 441/88, to be 79 807 000 hl, that is to say the surplus for the wine year was 7 578 000 hl; [49] (c) the stocks at the start of the wine year, as notified by Member States, were 46 886 000 hl; (d) the end-of-year stocks considered to be appropriate amounted to 33 253 000 hl, [50] corresponding to five months'

47 — OJ 1994 C 49, p. 12.

48 — The other 7 245 000 hl were grape juice.

49 — 87 385 000 hl -79 807 000 hl = 7 578 000 hl.

50 — The forward estimate gives 54 464 000 hl as the quantity before distillation but after wine deliveries.

normal foreseeable utilisation, [51] which meant that there were 13 633 000 hl of surplus stocks; (e) the total surplus to be eliminated therefore corresponded to the difference between the total quantities available (87 385 000 hl +46 886 000 hl = 134 271 000 hl) and the total needs for the wine year (79 807 000 hl +33 253 000 hl = 113 060 000 hl), that is to say 21 211 000 hl.

(ii) The criterion for determining the distillation requirement

70. The Commission explains that the uniform percentage of 85% provided for in Article 39(3) of Regulation No 822/87 was laid down by the Council taking into account table wine consumption at that time. The regions whose annual production was below 85% of their reference quantity were exempted from the obligation to distil because it was considered that, since their production was below that quantity and they had contributed to the improvement of market conditions, they could not be held responsible for any surpluses. As a result, such surpluses were to be regarded as falling on the regions, that is to say the Member States, whose production remained above 85% of the reference quantity.

71. At the same time, the continuing decline in the consumption of table wine has, over time, led to an appreciable fall in the quantity corresponding to foreseeable normal utilisation. [52]

72. The Commission explains that, in order to allow a return to the initial preconditions for market stability, it was considered that the logical solution was to set a new percentage, [53] taking into account the level of normal utilisation predicted for the wine year in question. That Community percentage was derived from the ratio between normal utilisation for the wine year and the total reference quantity.

73. Specifically, in the 1993/94 wine year the ratio had to be determined between normal utilisation amounting to 79 807 000 hl [54] and the total Community reference quantity in accordance with Article 4(3) of Regulation No 441/88 of 145 069 000 hl. [55] The result was a percentage of 55.01%. [56]

51 — The volume corresponding to those five months of normal utilisation was calculated as follows: (79 807 000 x 5) ÷ 12 = 33 253 000 hl.

52 — The Commission points out that in 1996 human consumption of table wine in the Community was 70 000 000 hl compared with 90 000 000 hl in 1982.

53 — That power is conferred on the Commission under the second subparagraph of Article 39(11) of Regulation No 822/87, as amended by Regulation No 1972/87.

54 — During the oral procedure the Italian Government maintained that another figure (134 271 000 hl) should be taken as a basis, reached by adding table wine production in the 1993/94 wine year (87 385 000 hl) and the stocks at the start of that year (46 886 000 hl); those two figures added together give the total availabilities at the start of the 1993/94 marketing year. That contention is unfounded. Article 4 of Regulation No 441/88 refers to the 'average *production*' (emphasis added) of table wine and products upstream of table wine, not to stocks at the start of each wine year. Irrespective of the above point, there is no proof of discrimination against Italian producers since the assessment made by the Commission was in any case based on objective data.

55 — The quantity derives from adding together the production averages for each Member State which are set out in that provision.

56 — (79 807 000 hl x 100) ÷ 145 069 000 hl = 55.01%.

74. According to the Commission, in order for compulsory distillation to take place — which was essential in order to restore market stability — it was necessary to take the refined percentage of 55.01% mentioned above. That percentage was to be applied to the reference quantity for each region as set out in Article 4(3) of Regulation No 441/88. The difference between the annual production of each region and the refined reference quantity made it possible to calculate the part played by each region in creating the overall disparity (at Community level). [57]

75. More particularly, Italy's share of the overall disparity was 77.31% whilst, for example, that of France was 11.09% and Spain's was 2.8%.

57 — According to a table which the Commission attached to its written answer to the question put by the Court, the breakdown of the surplus, in thousands of hectolitres (hl), among the Member States in accordance with the production forecasts of those States and on the basis of a reference percentage of 55.01% is as follows:

Member State	Reference quantity	Reference quantity 1993/94 wine year	Production 1993	Surplus	Difference %
I	64 163	35 296	45 025	9 729	77,31
F	40 182	22 104	23 500	1 396	11,09
E	27 500	15 128	15 490	362	2,88
P	7 250	3 988	3 050	—	—
EL	4 632	2 548	3 645	1 097	8,72
D	1 342	738	630	—	—
Total	145 069	79 802	91 365	12 584	100.00

(iii) Allocation of the distillation requirement

76. According to the Commission, the surplus which had to be eliminated (21 200 000 hl) was divided between compulsory distillation (18 200 000 hl) and support distillation (3 000 000 hl) which the Commission itself decided on. [58] The theoretical quantities attributed to each region, for both compulsory and support distillation, were determined according to its respective contribution to the overall disparity. Italy was consequently allocated the theoretical obligation to distil 14 070 420 hl whereas Spain, for example, was allocated 524 160 hl.

77. The quantities actually allocated, which are set out in Regulation No 343/94, resulted, according to the Commission at least, from discussions within the Management Committee for Wine under Article 83 of Regulation No 822/87. [59] The Commission made that adjustment by exercising its power under Article 39(11) of Regulation No 822/87, as amended. That procedure enabled Italy ultimately to carry out a reduced amount of compulsory distillation (12 150 000 hl instead of 14 070 420 hl) in exchange for a smaller share of support distillation (1 800 000 hl

58 — Allocation of the quantities to be distilled, in hectolitres, during the 1993/94 wine year.

Distillation	Compulsory	Preventive	Support	Total
Surplus	18 200 000	10 112 000	3 000 000	21 200 000

59 — The Italian Government contested those assertions of the Commission at the hearing, unconvincingly in my view, because it failed to adduce evidence in that regard.

instead of the 2 319 300 hl envisaged by the theoretical calculation). [60]

78. The Commission concludes by stating that the percentage of 85% envisaged by Article 39(3) of Regulation No 822/87 was reduced to 55% and implemented uniformly in all the production regions, not applying only to Italy. The successive adjustments were decided on under the procedure of the Management Committee for Wine, on the basis of objective criteria, such as the volume of production of each region, trends in consumption and existing stocks, criteria which were ultimately to Italy's advantage because they led to a reduction in the volume to be distilled, to 12 150 000 hl from the theoretical requirement of 14 070 420 hl. In other words, it is clear from the foregoing that the entire procedure did not entail any discrimination against Italian producers and the Italian Government's assertions to the contrary must be dismissed as unfounded.

79. While I consider, on the basis of the explanations given by the Commission, that the statement of grounds for Regulation No 343/94 is not vitiated by any defect, I would also wish to point out that it was not necessary for the percentage (55%), which was fixed in a perfectly legal manner, to be mentioned in the preamble to that regulation — the Italian Government pointed out its absence in paragraph 10 of its written observations — in order for the quantity to be distilled to be more easily determined by the reader of that regulation. I therefore consider, in the light also of the recitals in the preamble to Regulation No 343/94 set out above, that no error is to be found in the statement of grounds for the disputed regulation, since the detailed description of the Commission's reasoning constitutes a choice of a technical nature which could have been omitted without prejudicing the grounds of the measure adopted.

80. The Court has, moreover, consistently held [61] that 'although the reasoning required by Article 190 of the EC Treaty must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure so as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to exercise its review ... it is not required to go into every relevant point of fact and law. The question whether a statement of reasons satisfies those requirements must be assessed with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question. Consequently, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution'.

60 — For example, according to the Commission Spain agreed to the compulsory distillation of 3 000 000 hl (instead of the 524 160 hl resulting from the theoretical calculation), but it delivered 400 000 hl instead of 86 000 hl for support distillation.

61 — See Case C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 29, and Case C-466/93 *Atlanta Fruchthandelsgesellschaft and Others II* v *Bundesamt für Ernährung und Forstwirtschaft* [1995] ECR I-3799, paragraph 16.

(d) Allocation on the basis of data forwarded by Italy

81. According to the national court and to Mr Zaninotto, in the 1993/94 wine year the Commission fixed the quantity for compulsory distillation on the basis of a forward estimate prepared using manifestly inaccurate data supplied by the Italian authorities, despite the fact that the Community legislation (Regulation No 2396/84) requires other sources of information to be resorted to in such cases, in particular information supplied by trade organisations.

82. First of all, in my view, and as the Spanish Government rightly points out, it is surprising that the national court and Mr Zaninotto seek essentially to ascribe his failure to comply with his obligation to the Italian Government's failure to comply with its obligation to supply accurate data. The whole system under which the Community forward estimate is drawn up for each wine year is based on declarations made in turn by the parties involved in the wine sector (producers and administrative authorities of Member States).

83. More specifically, under Commission Regulation No 2396/84 (Article 1(1)) the forward estimate was to be drawn up by the Commission on the basis of all the information available, but including 'in particular' information forwarded by the Member States (first indent) and any other information which it considered reliable (second indent). It was also stipulated (Article 1(3)) that, with regard to the information referred to in the second indent of Article 1(1), use was to be made of all sources of information available, and 'in particular' (a) publications relating to production and distribution in the Member States and (b) the trade organisations representing production and distribution in the Member States, especially those represented on the Advisory Committee on Wine.

84. The combined interpretation of the relevant provisions of Regulation No 2396/84 shows, therefore, that the Commission is given the choice of simply using the information supplied to it by the Member States or of also resorting to other reliable sources. In addition, under Article 2 of Regulation No 2396/84 the information referred to in the second indent of Article 1(1) is to be used only where a significant discrepancy likely to compromise the efficient management of the wine market is found to exist between the figures provided by the Member States as referred to in Article 1(2) and the said information. However, nothing of that nature has been proved in this case.

85. In addition, Title I of Commission Regulation No 3929/87 (Articles 1 to 5) concerns the 'harvest, production and stock declarations to be made by certain operators in the wine sector', while Title II of the same regulation (Articles 6 to 9) concerns the 'communications to be made by the Member States' to the Commission. Those communications are made on the basis of the harvest, production and stock declarations drawn up by producers under the procedure laid down in that regulation.

86. The Commission observes that, on the one hand, a large number of factors are taken into account when definitively fixing the quantities to be distilled for each Member State, as I have already explained, and that, on the other, there may be disparities between the estimates and reality. However, the endeavour to improve conditions in the market and restore its stability may lead to increases in the quantity to be distilled without that resulting in unlawful discrimination among producers who have already complied with their obligations or their legitimate expectations being affected, as we shall see.

87. The Commission points out that after the estimates are corrected to take account of the final data it may be that producers will be required to deliver for distillation during the following year of production the quantity which they would have been required to distil the previous year if the estimates had been correct. [62]

88. In view of the above, and given that the production declarations forwarded to the Commission by the Member States, which are based in turn on those made by producers, distributors and trade organisations, acquire great importance for drawing up the forward estimate, the Commission and the Spanish Government conclude, rightly in my view, that, in accordance with the division of powers between Community and national authorities, it is for Member States and not the Commission to verify the accuracy of the data in question. [63]

(e) Carrying over ('decanting') undistilled quantities from one wine year to the next

89. Mr Zaninotto maintains that the carrying over ('decanting') of 1 250 000 hl which some producers had unlawfully failed to distil during the preceding wine year infringes Article 23 of Regulation No 441/88. In his opinion, the producers who complied with their obligations should not be punished as against those who contravened the law. He contends that such a measure would have the absurd consequence of the producers acting in good faith being forced either to deliver for distillation

62 — Failure to distil may be due to various reasons: as the Commission mentions, by way of example, it may be that individual producers decide not to comply with their obligations, in which case they incur the penalties provided for under national law, or it may be due to the fact that the graduated tables (of yield per hectare) taken into account do not correspond to reality.

63 — With regard to the matter of the Commission's reviewing the validity of measures taken by national authorities before it takes its own decision, it is worth noting that in Case C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313, which related to proceedings brought under Article 173 of the Treaty, the Court held as follows: 'It should be pointed out that in an action brought under Article 173 of the Treaty the Court has no jurisdiction to rule on the lawfulness of a measure adopted by a national authority' (paragraph 9). It continued: 'That position cannot be altered by the fact that the measure in question forms part of a Community decision-making procedure, since it clearly follows from the division of powers in the field in question between the national authorities and the Community institutions that the measure adopted by the national authority is binding on the Community decision-taking authority and therefore determines the terms of the Community decision to be adopted. That is so where the competent national authority issues an unfavourable opinion on an application for aid from the [European Agricultural Guidance and Guarantee] Fund ... a project may receive aid from the Fund only if it is approved by the Member State on whose territory it is to be carried out and ... consequently, where the opinion is unfavourable the Commission can neither follow the procedure for the examination of the project in accordance with the rules laid down in that regulation nor *a fortiori* review the lawfulness of the opinion thus issued. In those circumstances, any irregularity that might affect the opinion cannot affect the validity of the decision by which the Commission refused the aid applied for' (paragraphs 10, 11 and 12). The Court concluded: 'Accordingly, it is for the national courts, where appropriate after obtaining a preliminary ruling from the Court, to rule on the lawfulness of the national measure at issue on the same terms on which they review any definitive measure adopted by the same national authority which is capable of adversely affecting third parties and, consequently, to regard an action brought for that purpose as admissible even if the domestic rules of procedure do not provide for this in such a case' (paragraph 13).

some of their wine from the following wine year or to purchase wine from other producers in order to hand it over for distillation, because their own production was already sold.

90. It is necessary to make a preliminary explanatory remark at this point. First, failure on the part of wine producers to comply with the obligation to distil may lead to imposition of the penalties provided for by national law, in accordance with Article 79 of Regulation No 822/87. It was, moreover, on such a basis that the fine was imposed which Mr Zanotto contested, bringing about the main proceedings. [64] Secondly, under Article 22 of Regulation No 441/88 the producers in question are not eligible for intervention measures. [65] Provision is made for similar penalties to be imposed on producers who submit incorrect declarations.

91. In addition, it must not be overlooked that the quantity of wine which it is necessary to distil in order to improve market conditions may ultimately not be achieved not only because producers fail to comply with their obligations but also because the data which the Member States notify to the Commission are inaccurate.

92. The Commission rightly observes that the penalties imposed do not also automatically lead to the removal from the market of the quantities of table wine which should have been distilled but ultimately were not distilled within the time-limits set. For example, where a producer who was required to distil a certain quantity of wine managed to sell it all during the 1993/94 wine year and thus no longer had any wine to deliver for compulsory distillation, the corresponding quantity remained on the market, thereby putting the improvement of market conditions at risk.

93. Consequently, in the subsequent wine year distillation of the wine which was not distilled during the preceding wine year is justified by the overriding need finally to remove that quantity from the market. As the Commission points out, if the wine remained on the market that would jeopardise the objective of compulsory distillation and would ultimately harm all producers, in particular those who had duly complied with their obligations, who would have done so in vain because others had failed to comply with theirs. Indeed the former, despite duly bearing the burden of delivering wine for distillation, would not have reaped the resulting benefits in terms of improved market conditions. The principle of solidarity and cohesion on the market in question justified such carrying over, in order for the objectives of the compulsory distillation scheme to be achieved.

94. The Commission, invoking the principle of Community solidarity, points out that the obligation to distil surplus quantities is borne by all Community producers; the quantities

64 — The penalty, provided for under Italian law in accordance with Article 79 of Regulation No 822/87, is a fine of ITL 50 000 per 100 kg of wine or fraction thereof not delivered for distillation.

65 — A provision adopted under Article 47(1) in Title III of Regulation No 822/87.

in question are absorbed proportionally by the producers in every region. It concludes that it is incorrect to state that the Italian surplus of 1 285 000 hl of table wine from the 1992/93 wine year which was not distilled became the sole responsibility of Italian producers during the following wine year. That surplus which, as the Commission acknowledges (paragraph 14 of its written observations), was accounted for in the availabilities of table wine in the 1993/94 wine year was in fact redistributed among all the Community producers in accordance with the principle of Community solidarity.

95. In my view, it follows from the above reasoning and from the scheme of Regulation No 343/94 that the Commission did not exercise the power conferred on it incorrectly. That is to say, in determining, first, the total quantity of table wine to be distilled in the Community and, secondly, the quantities to be distilled in the various regions within the meaning of Article 4(2) of Regulation No 441/88, the Commission relied on objective criteria in that it took into account the entire production, stocks and availabilities at the end of the wine year in respect of all producers within the European Community and, as regards Region 4 (Italy), in respect of all the producers of that Member State, and not only the producers from Venetia such as Mr Zaninotto.

96. Support for that view may be found in the case-law of the Court, which has consistently held [66] that 'the principle of non-discrimination does not preclude a Community regulation which introduced a system of guarantee thresholds for the entire Community involving a reduction in the production aid of the relevant producers of all the Member States, even if exceeding those thresholds was not due to an increase in production in all those States'. It has added that '... in a common organisation of markets with no system of national quotas all Community producers, regardless of the Member State in which they are based, must together, in an egalitarian manner, bear the consequences of the decisions which the Community institutions are led to adopt, in the exercise of their powers, in order to respond to the risk of an imbalance which may arise in the market between production and market outlets'.

97. In addition, according to the case-law of the Court, the fact that the adoption of a measure within the framework of the common organisation of the market [67] may affect producers in different ways, depending upon the particular nature of their production or on

66 — See *Crispoltoni and Others*, cited above at footnote 45, paragraph 52 (relating to whether there is discriminatory treatment where the unfavourable consequences arising from excess production are extended to all producers, irrespective of whether and to what extent they have contributed to such excess), Case C-27/90 *SITPA* v *ONIFLHOR* [1991] ECR I-133, paragraph 20, and Case C-324/96 *Petridi* v *Simou and Others* [1998] ECR I-1333, paragraph 35.

67 — For example, Case 179/84 *Bozzetti* v *Invernizzi* [1985] ECR 2301 was concerned with the introduction of a co-responsibility levy in the context of the market in milk and milk products.

local conditions, cannot be regarded as discrimination if the measure is adopted on the basis of objective rules formulated to meet the needs of the general common organisation of the market. [68]

98. In my view, given the wide discretion which the Commission enjoys in pursuing the objective of improving conditions in the wine market under the enabling provision contained in Article 39 of Council Regulation No 822/87, it has not, by acting as it did, infringed the prohibition of discrimination laid down in Article 40(3) of the Treaty or Article 23 of implementing Regulation No 441/88.

(2) Question 2: breach of the principle of the protection of legitimate expectations

99. The second question concerns, this time with regard to breach of the principle of the protection of legitimate expectations, the validity of the same provisions as were at issue in the first question, namely the fourth indent of Article 1(3) of Regulation No 343/94, and Article 1(1)(c) and the second subparagraph of Article 1(2) (and the annex, to the extent that it concerns Region 4) of Regulation No 465/94, as amended by Regulation No 610/94 so far as concerns Region 4 (Italy).

100. In the view of the national court, the inequitable apportionment of the quantities to be distilled, the obvious inaccuracies in the calculation of those quantities, and the carrying over of 1 285 000 hl of table wine which was effected in a totally arbitrary fashion and with a completely different perspective prima facie thwart the legitimate expectations of Community citizens, that is to say the legitimate expectations of winegrowers who believed that, having complied with the obligation to distil during the 1992/93 wine year, they would not be subsequently burdened with other liabilities which in fact related to that year and were imposed on them only because others had not complied with their own obligations.

101. As the Court has held on a number of occasions, [69] the principle of legitimate expectations, 'which is part of the Community legal order ... is the corollary of the principle of legal certainty, which requires that legal rules be clear and precise, and aims to ensure that situations and legal relationships governed by Community law remain foreseeable'. However, as the Court has stated, [70] 'it is settled case-law that in the sphere of the common organisation of the markets, whose purpose involves constant adjustments to meet changes in the economic situation, economic agents cannot legitimately expect that they will not be subject to restrictions arising out of future

68 — *Bozzetti*, paragraph 34.

69 — See the judgment in *Duff and Others*, cited above in footnote 44, paragraph 20, and point 23 et seq. of my Opinion in that case. See also Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* v *Germany* [1983] ECR 2633, paragraph 30, and Case C-177/90 *Kühn* v *Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraph 13.

70 — *Duff and Others*, paragraph 20.

rules of market or structural policy'. [71] It has pointed out that 'the principle of the protection of legitimate expectations may be invoked as against Community rules, only to the extent that the Community itself has previously created a situation which can give rise to a legitimate expectation'. [72]

102. In view of that settled case-law and of the analysis given above when answering the first question, and given that the Commission has a wide discretion in the adoption of the measures required to improve conditions in the market in table wine, I do not believe that the arguments put forward by the national court can be accepted.

103. More specifically, there are three reasons why they cannot be accepted. First, as I have already explained, the quantities of table wine to be distilled in respect of the 1993/94 wine year were allocated on the basis of objective data provided for under the Community legislation in force at that time and of figures supplied by the Member States. Secondly, as we have seen, there may be disparities between the Community forward estimate for a wine year, in this case 1993/94, and the definitive table for the same year. Lastly, I have analysed the reasons why it is necessary, in order for conditions in the wine market to be improved, to distil in the following year table wines not distilled during the immediately preceding reference year.

104. There can thus be no question of legitimate expectations having been created in favour of those producers who were subject to the obligation to distil nor, therefore, of the disputed Community legislation infringing that higher-ranking principle.

B — *Questions 3 and 4: the criterion of yield per hectare*

(1) Question 3: impossibility of correctly assessing the yield per hectare for the region constituted by Italy; *ultra vires* action on the part of the Commission

105. The third question referred by the national court concerns the validity of the same provisions as those at issue in the first two questions, namely the fourth indent of Article 1(3) of Regulation No 343/94 and

71 — In its judgment in Case 52/81 *Faust* v *Commission* [1982] ECR 3745, at paragraph 27, an action for compensation brought under the second paragraph of Article 215 of the EEC Treaty relating to protective measures against imports of preserved mushrooms, the Court stated: 'Since Community institutions enjoy a margin of discretion in the choice of the means needed to achieve their policies, traders are unable to claim that they have a legitimate expectation that an existing situation which is capable of being altered by decisions taken by those institutions within the limits of their discretionary power will be maintained'.

72 — See, for example, *Kühn*, cited above in footnote 69 (paragraph 14).

Article 1(1) and (2) of Regulation No 465/94, [73] as amended by Regulation No 610/94. It asks whether those provisions infringe Article 31 of Regulation No 822/87 and whether their enactment by the Commission was *ultra vires* because the essential preconditions laid down in that article were not met.

106. According to the national court, the decision introducing compulsory distillation for the 1993/94 wine year on the face of it appears, as regards Region 4, that is to say Italy, not to be founded on an essential precondition prescribed by law regarding the correct determination of the 'yield per hectare', which is calculated by dividing the production volume by the area under vines. Italy has still not established a vineyard register and the decision to carry out compulsory distillation in the 1993/94 wine year was therefore mistaken as regards Italy because there was no correct calculation of the yield per hectare, a precondition for the adoption of such a decision. The national court concludes, furthermore, that the Italian wine producers suffered harm as a result of the application of the yield per hectare (hl/ha) criterion, which was determined on the basis of inaccurate data.

107. Mr Zaninotto contends that the Commission took its decision on the basis of inaccurate data despite being aware of their inaccuracy and failed to exercise its supervisory powers in the wine sector conferred by Community legislation. [74] He concludes that the illegality of the national measure on which the Commission's measures are based means that the latter are void. [75]

108. Since the validity of the provisions concerning the criterion of yield per hectare is the subject of the fourth question referred by the national court, I think that by the present question it is expressing its doubts as to whether the yield per hectare was correctly determined, given the absence of an accurate means of doing so, namely the vineyard register.

109. The following observations are called for. Under the legislation in force, [76] the vine-

73 — The national court also raises the issue of the validity of Article 1(3) of Regulation No 465/94, which does not exist. See my comments thereon in point 52.

74 — He relies on Article 1 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). According to the first two recitals in the preamble to that regulation, it laid down, for the purposes of uniform application of the wine provisions, rules designed to improve the control procedures already in force at Community and national level and to strengthen cooperation between the authorities responsible for the controls in the wine sector. General rules were also laid down for the introduction and operation of a Community structure comprising a body of officials specialised in control in the wine sector, responsible, at Community level, for ensuring uniform application of Community rules in the context of the market in wine. Furthermore, according to the third recital, that regulation also laid down provisions under which the national authorities and the Commission must provide mutual assistance with a view to ensuring proper application of the wine rules, in particular through preventive action and the detection of infringements or behaviour suspected of infringing the rules.

75 — He mentions in particular that in Italy there are only 700 000 ha under vine and not 900 000 ha.

76 — The creating of a Community vineyard register was provided for in Article 80 of Regulation No 822/87. In addition, the Council adopted Regulation (EEC) No 2392/86 of 24 July 1986 establishing a Community vineyard register (OJ 1986 L 208, p. 1), which has been amended on several occasions, in particular by Council Regulation (EC) No 1549/95 of 29 June 1995 (OJ 1995 L 148, p. 37).

yard register in theory facilitates the checking of data relating to areas under cultivation (under vines) and the volume of production, but it certainly does not automatically provide data relating to the harvest and the volume of stocks of particular produce. Under Regulation No 3929/87 such data are in fact notified to the Commission by Member States on the basis of the harvest, production and stock declarations which the producers themselves must submit, that is to say the persons who are engaged in activities in the wine sector.

110. Consequently, as the Spanish Government rightly points out, when the volume of table wine to be distilled in each Member State is determined account is not taken of the areas from which the wine comes but solely of the production volume of each State. Moreover, it is apparent from Article 39(3) of Regulation No 822/87 that the yield per hectare is not taken into account when the quantities to be distilled are allocated among the Member States. It is taken into account, on the other hand, when the quantity already allotted to a Member State is allocated among the producers required to distil it. [77]

111. In addition, I think that in this case there is no convincing evidence to support the conclusion that the system for fixing the yield per hectare and determining on that basis the quantities to be distilled by producers is incapable of functioning without a vineyard register, nor could such a conclusion be drawn from interpreting the legislation in force. Indeed, the data on which the criteria of yield per hectare (hl/ha) are based are notified by the Member States, as the Commission rightly states. Lastly, the quantity of wine which each producer must distil depends, in principle, on the area under cultivation and the harvest and production declarations which he himself supplies.

112. Nor has Mr Zaninotto adduced, with regard to the Commission acting *ultra vires*, and *a fortiori* with regard to it misusing its power, sufficient evidence to establish in relation to the latter that, 'on the basis of objec-

77 — In addition, as the Commission points out, the establishment of a vineyard register has created objective difficulties for the Member States and, at the end of February 1997, only two countries (Germany and Luxembourg) had working registers. The other Member States, including Italy, had been unable to establish one or to make it operational. In order for those difficulties to be tackled, the Council adopted Regulation (EC) No 1596/96 of 30 July 1996 amending Regulation No 2392/86 (OJ 1996 L 206, p. 38), which extended until 31 December 1998 the time-limit for establishing reference charts covering the entire area under vines. Those reference charts constitute one of the key elements of the vineyard register and should in the future serve as a reference base for the management of Community measures in the wine sector.

tive, relevant and consistent indications', the measure was adopted in order to achieve purposes other than those for which it was intended. [78]

(2) Question 4: allocation of quantities to be distilled on the basis of the criterion of yield per hectare; contravention of the principle of proportionality, in particular the manifestly inappropriate nature of the measure adopted

113. The national court and Mr Zaninotto consider that Article 39(4) of Regulation No 822/87, which provides that the quantity to be compulsorily distilled by each producer is to be determined on the basis of the criterion of yield per hectare, is invalid because it offends against the principle of proportionality. They take the view that the measure adopted is a manifestly inappropriate means of attaining the objectives pursued by compulsory distillation, namely improving market conditions, guiding producers towards quality production and reducing the amount of mediocre wine produced. They contend that the yield per hectare criterion is inadequate [79] and inappropriate for achieving the Community objectives because it does not prove either that the wine is of mediocre quality or that it is overproduced. It penalises excessively producers who make good quality wine which is easy to sell and who do not create surpluses, while ultimately benefiting producers of poor quality wine whom it essentially funds. In other words, instead of being a short-term measure it thereby becomes a structural measure. Moreover, other more suitable criteria could be used, such as the level of end-of-year stocks.

114. On the other hand, the Council, the Commission and the Spanish Government consider that the criterion of yield per hectare is a necessary and appropriate means of achieving the objective pursued and that its disadvantages do not outweigh its advantages.

(a) The case-law of the Court concerning the principle of proportionality and the extent of the Court's power of review

115. The Court has consistently held that the principle of proportionality, which is a superior rule of law and one of the general principles of Community law, requires that 'measures adopted by Community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused

78 — See, for example, Case C-323/88 *Sermes* v *Directeur des Services des Douanes de Strasbourg* [1990] ECR I-3027, paragraph 33, Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 134, and *Crispoltoni and Others*, cited above in footnote 45, paragraph 27.

79 — Reliance is placed in that regard on a communication of the Commission of 22 July 1993, p. 10.

must not be disproportionate to the aims pursued'. [80]

116. Furthermore, as regards judicial review of the application of the principle of proportionality by the Community legislature in the area of the common agricultural policy, it should be mentioned that, according to the Court's settled case-law, [81] 'in matters concerning the common agricultural policy, the Community legislator has a discretionary power which corresponds to the political responsibilities imposed by Articles 40 and 43. Consequently, the legality of a measure adopted in that sphere can be affected only if the measure is manifestly inappropriate having regard to the objective which the competent institution intends to pursue'. [82]

117. In other words, the choice of a particular solution in order to deal with a problem within the framework of the common organisation of a market in a product, such as the market in wine, constitutes an expression of the wide discretion available to the Council in that area under the Treaty. That is to say the Council has the power, having considered a large number of factors, to choose the solution which it considers to be best.

118. In this case, it exercised that power and chose to introduce compulsory distillation, in accordance with particular conditions, in order to restore the balance and improve the conditions of the wine market.

119. Moreover, it regarded yield per hectare as the most appropriate criterion for setting the percentage applicable to the production of each winegrower in order ultimately to achieve the quantity to be distilled in each region.

120. In making that choice, the Council certainly could not determine precisely all the future effects of the legislation it adopted. In that regard, the Court has consistently held that [83] 'the legality of a Community act cannot depend on retrospective considerations of its efficacy'. It has stated: [84] 'Where the Commu-

80 — See, for example, *Crispoltoni and Others*, cited in footnote 45 above, paragraph 41, Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 21, Case C-331/88 *The Queen* v *MAFF and Another* ex parte *Fedesa and Others* [1990] ECR I-4023, paragraph 13, Case C-295/94 *Hüpeden* v *Hauptzollamt Hamburg-Jonas* [1996] ECR I-3375, paragraph 14, and Case C-296/94 *Pietsch* v *Hauptzollamt Hamburg-Waltershof* [1996] ECR I-3409, paragraph 15.

81 — See, for example, *Schräder*, cited above, paragraph 22, *Fedesa and Others*, cited above, paragraph 14, and Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraphs 89 and 90.

82 — See, for example, *Fedesa and Others*, cited above, paragraph 14, and *Crispoltoni and Others*, cited above, paragraph 42.

83 — See, for example, Case 40/72 *Schroeder* v *Germany* [1973] ECR 125, paragraph 14, and *Crispoltoni and Others*, cited above, paragraph 43.

84 — See, for example, *Crispoltoni and Others*, cited above, paragraph 43, and *Wuidart and Others*, cited above in footnote 44, paragraph 14.

nity legislature is obliged to assess the future effects of rules to be adopted and those effects cannot be accurately foreseen, its assessment is open to criticism only if it appears manifestly incorrect in the light of the information available to it at the time of the adoption of the rules in question.'

121. Consequently, the question as to whether the measures provided for by Article 39(4) of Regulation No 822/87 are invalid on the ground of breach of the principle of proportionality would arise only if those measures were manifestly inappropriate or unnecessary as regards the objectives pursued.

122. It is therefore necessary first to examine the objective of the legislation concerned, and then to determine whether the measure adopted by the Council is manifestly inappropriate or unnecessary in order to achieve that objective and whether its disadvantages exceed its advantages.

(b) The objective sought

123. The forty-fifth recital in the preamble to Regulation No 822/87 states that 'compulsory distillation appears to be the most effective measure to absorb surpluses of table wine on the market; ... provision must consequently be made for such distillation to be introduced once it is clear that the market is in a state of serious imbalance and ... precise criteria must be defined for the assessment of such imbalance'.

124. As regards the breakdown of the total quantity of wine for distillation, the forty-sixth recital states that 'because of the weather and the impact of structural measures, the trend in production may vary between the production regions of the Community...'.

125. Lastly, the forty-eighth recital explains the reason why the percentage of production which must be delivered for compulsory distillation is to be determined on the basis of yield per hectare: 'It is fair to share out the obligations between producers on the basis of their yield per hectare and to ensure that producers with low yields are not penalised; ... differences between production regions warrant the application of differing rates to producers in the various regions'.

126. Those objectives — reducing the surpluses of table wine on the wine market, tackling the serious imbalance in that market by fixing specific criteria for assessing that instability, allocating the obligations fairly among producers on the basis of yield per hectare (hl/ha) and taking into account the differences between the production regions — are in my view encompassed within the objectives of the common agricultural policy, as set out in Article 39(1)(b) and (c) of the Treaty. Indeed, with the distillation measure the Council tries to reconcile the various objectives of Article 39 of the Treaty, seeking to create stability in the market in wine, [85] while at the same time not neglecting the need to safeguard producers' individual incomes. [86]

(c) Is the measure necessary and appropriate?

127. Compulsory distillation on the basis of yield per hectare [87] constitutes the main stabilising element in improving conditions in the market in wine, [88] since the buying-in price for table wines for compulsory distillation was set at a low level and deters wine-growers from overproduction. [89]

128. Consequently, the apportionment of obligations between producers according to the yield per hectare stems from a necessary choice, based on an objective criterion which can easily be applied. That choice is not manifestly wrong, in my view, since it is designed to impose most of the burden of compulsory distillation on those producers who are mainly responsible for the overproduction in the table wine market.

129. In addition, since the prices paid to producers for wine delivered for compulsory distillation are below the market prices, the measure adopted cannot be regarded as inap-

85 — See, for example, Case 116/82 *Commission* v *Germany* [1986] ECR 2519, paragraph 28.

86 — See, for example, *Commission* v *Council*, cited above in footnote 61, paragraph 24, *Crispoltoni and Others*, cited above in footnote 45, paragraph 32, and *Germany* v *Council*, cited above in footnote 81, paragraph 47.

87 — It will be recalled that the yield per hectare (hl/ha) is determined on the basis of the production declarations made by the producers themselves, in accordance with Article 3 of Regulation No 822/87 and Article 5 of Regulation No 3929/87.

88 — In its communication COM (380) to the Council of 22 July 1993 on the development and future of wine sector policy, the Commission stated (in paragraph 3, p. 10) that compulsory distillation ought to remain the 'cornerstone' of the system since it alone could eliminate at tolerable cost the market surpluses. The market concerned has had a permanent structural imbalance for years.

89 — For example, under Article 39(6) of Regulation No 822/87, as replaced by Article 1(2) of Regulation No 1441/88, the purchase price for table wines delivered for compulsory distillation is to be fixed according to the quantities to be distilled at 50% or 40% of the guide price. Specifically, it is equal to 50% where the quantities for distillation do not exceed 12 500 000 hl and 40% where they exceed that threshold.

propriate, even less as manifestly inappropriate, for attaining the objective of compulsory distillation. [90]

130. The fact that that criterion is not manifestly inappropriate for attaining the objective pursued by compulsory distillation of improving conditions in the market in wine can also be seen from the absence, among the possible alternatives, of a criterion which appears on the basis of cogent evidence to be manifestly more suitable, that is to say preferable as regards proportionality, equitable progressivity and certainty.

131. As the Commission and the Council point out, a criterion based on reducing each producer's area under vines would lead to a reduction in activity without necessarily also reducing the yield per hectare. Similarly, a criterion based on the price of the wine might exclude producers of low-cost wine from the market, even though such wine is not necessarily of poor quality and finds outlets in the market. Lastly, as the Council states, a criterion based on stocks at the end of the wine year would be difficult to apply because such stocks are difficult to monitor. [91]

(d) Weighing up the advantages and disadvantages

132. I have concluded above that the criterion of yield per hectare is a necessary and appropriate means of achieving the objective pursued by compulsory distillation of eliminating surpluses. As regards the more specific question as to whether the criterion of yield per hectare presents more disadvantages than advantages for the producers affected, I should like to make the following observations.

90 — I note that, in its Special Report No 4/87 on Community wine distillation measures accompanied by the Commission's replies (OJ 1987 C 297, p. 14, at p. 36), the Court of Auditors made the following findings with regard to the measures for the compulsory distillation of table wine on the basis of the yield per hectare obtained by producers:
'7.9These measures are generally seen as an effective means of tackling the problem of over-production of wine in the Community by discouraging high yields through their progressive application.
7.10The Court, while recognising that the measures are a step in the right direction, considers that they are, nonetheless, unlikely to put a brake on production to a significant degree, mainly because:
(a)the prices offered to the producers, equal to 50% of the guide price, are still attractive to producers in certain regions;
(b)the implementing rules adopted by the Commission, by allowing for a system of transferring producers' obligations, render the measures an ineffective censure of high yields, all the more so, because the producer may transfer his obligation to a producer in any other wine-growing region of the Community who may even deliver a different type of wine.
The Court considers that the provision of such a transfer system is contrary to the spirit of the European Council agreement which was expressly designed to discourage excessive yields.'
(The above reference is to the European Council held in Dublin on 11 December 1984.)

91 — In the Commission's communication to the Council of 22 July 1993, cited above in footnote 88, the Commission considered that it was conceivable to apply a system under which a Member State could use not only yield per hectare but also production stocks and any other objective criterion as a means of apportioning the quantity for distillation.

133. First of all, that criterion makes it possible to achieve the objective of restoring market stability without imposing a disproportionate burden on producers since, as the Spanish Government rightly observes, they are able to choose what part of their harvest they will deliver for distillation and they secure a price [92] for wine which they might find difficult to sell in the market.

134. In addition, as the Commission points out (paragraph 27 of its written observations), that criterion is not absolute, since it is tempered by the division of Community territory into production areas so that account is taken of the special features of each wine-growing area. Indeed, if the whole of that territory constituted a single region, whole production regions with a low yield per hectare would not be required to distil a part of their production. For that reason, except in cases of exceptionally low yields per hectare, where producers may be exempted from the obligation to distil part of their production under Article 39(4) of Regulation No 822/87, producers in each region of the Community must deliver certain quantities of table wine for compulsory distillation. Those quantities will be proportionately higher for producers who, within a particular region, have a higher yield per hectare.

92 — As indicated above, that price is equal to 50% of the guide price where the quantities for distillation do not exceed 12 500 000 hl and 40% where they exceed that threshold.

135. It accordingly follows from the above analysis that the principle of proportionality has not been infringed by the use of the criterion of yield per hectare for determining the quantity to be delivered for compulsory distillation in order to deal with serious imbalance in the market in wine.

C — *Question 5: designation of Italy as a single region*

136. By its fifth question, the national court casts doubt on the validity of the fourth indent of Article 4(2) of Regulation No 441/88, under which Italy is to be regarded as a single production region (Region 4).

137. According to the national court and Mr Zaninotto, that illogical refusal to subdivide Italian territory and its consequent management as a single unit are incompatible with the genuine differences within that territory both from the geographical point of view (climate, soil and so forth) and, more especially, from the oenological point of view (the quantity and quality of the wines produced). At the hearing Mr Zaninotto pointed out that the Commission has divided Spain into two

parts (Part A and Part B), only one of which (Part B) has been made subject to compulsory distillation. [93]

138. According to the national court, the Commission exceeded the limits imposed by the Court [94] when it exercised its discretion and allocated the various quantities among the Member States in order to implement the common organisation of the market in an agricultural product, since that allocation does not reflect the structures existing within the Member State concerned.

139. First of all, it should be pointed out that, under the fourth indent of Article 155 of the Treaty, in order to ensure the proper functioning and development of the common market the Commission is to exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter. Article 39 of Council Regulation No 822/87 requires the Commission to adopt the provisions for applying that article and to lay down the conditions under which compulsory distillation is to be carried out.

140. The Court has consistently held [95] that 'it follows from the context of the Treaty in which Article 155 must be placed and also from practical requirements that the concept of implementation must be given a wide interpretation. Since only the Commission is in a position to keep track of agricultural market trends and to act quickly when necessary, the Council may confer on it wide powers in that sphere. Consequently, the limits of those powers must be determined by reference to the essential general aims of the market organisation'.

141. According to the first subparagraph of Article 39(3) of Council Regulation No 822/87, the total quantity for compulsory distillation is to be shared between the various production regions of the Community, grouped together by Member State. Under Article 4 of Regulation No 441/88 those regions are to be designated on the basis of a set of considerations relating, on the one hand, to production and climatic conditions and, on the other hand, to the differences existing between Member States in terms of administrative structure and legal requirements, particularly as regards the internal organisation of cooperative wineries and producer groups. [96]

93 — That division was made by Article 1(4) of Regulation No 343/94. During the 1993/94 wine year the quantity for compulsory distillation in Spain was 3 000 000 hl.

94 — It refers for example to *Wuidart and Others*, cited above in footnote 44, in which the issues raised included whether a Member State may treat the whole of its territory as a single region within the meaning of a provision in a regulation concerning the common organisation of a market in an agricultural product (in that case, the market in the milk and milk products sector).

95 — See, for example, Case 22/88 *Vreugdenhil and Another* v *Minister van Landbouw en Visserij* [1989] ECR 2049, paragraph 16, Case 167/88 *Association Générale des Producteurs de Blé et Autres Céréales* [1989] ECR 1653, paragraph 15, and Joined Cases 279/84, 280/84, 285/84 and 286/84 *Rau and Others* v *Commission* [1987] ECR 1069, paragraph 14.

96 — In the case of Italy, the Commission did not, as it did in the case of Spain, make use of the freedom given to it by the second subparagraph of Article 4(1) of Regulation No 441/88, which states that the production regions referred to in Article 39(3) of Regulation No 822/87 are to coincide with administrative units larger than communes and comprise administrative units on which statistics are available for the reference wine years referred to in the second indent of the second subparagraph of Article 39(3) of Regulation No 822/87.

142. As the Commission and the Spanish Government rightly state, it is clearly much easier administratively for the national authorities to collect the necessary data if a production region coincides with a Member State. Those data are essential for compiling the Community forward estimate for a wine year, which is the basis for determining whether distillation is necessary in order to improve market conditions.

143. Furthermore, the Italian authorities have experienced objective difficulties in collecting the necessary data within the time-limits laid down by Community legislation. That is the reason why, in respect of the 1993/94 wine year, the Commission had to adopt Regulation No 610/94 specifically for Italy (Region 4), which, as can be seen from the sixth recital in the preamble to Regulation No 465/94, had not forwarded the required table wine production figures or the breakdown of production among the various yield classes in good time. It had thus not been possible to determine the percentage to be applied to the production of each Italian producer so as to set the quantities of table wine which the latter had to deliver for distillation.

144. In addition, the reference periods which were used to determine the extent to which it was necessary to carry out compulsory distillation in the 1993/94 wine year, in accordance with Article 39(3) of Regulation No 822/87, are laid down on the basis of data collected by the Member States and are representative of a country's whole territory.

145. As regards the climatic and oenological conditions to be taken into account when determining the production regions, I consider that the Commission has a large measure of discretion under Article 39(3) of Regulation No 822/87.

146. More specifically, the Court has held that in the agricultural sector 'the Commission is authorised to adopt all the measures which are necessary or appropriate for the implementation of the basic legislation, provided that they are not contrary to such legislation or to the implementing legislation adopted by the Council'. [97]

147. In the instant case, the Commission exercised the wide power accorded it under Article 39(3) of Regulation No 822/87. Of course, Region 4 (Italy), like any other region of a Member State, includes wine-growing areas with differing characteristics. [98] However, within Region 4 the various smaller areas balance each other out. The Commission maintains that it took the view, with the agreement of the Member State concerned, that objectively there were no grounds justifying a further fine breakdown into production 'subregions'. It cannot be considered to have

97 — See Case 121/83 *Zuckerfabrik Franken* v *Hauptzollamt Würzburg* [1984] ECR 2039, paragraph 13.

98 — By way of example the Commission mentions that Apulia, Emilia-Romagna and Venetia have a yield per hectare which is the same, or even higher, than the average national yield and differs from the yield in Sicily, which is below the national average.

misused its wide discretion when it states that such a further breakdown would have given rise to great administrative difficulties in the absence of objective historical data to support a different demarcation of the production areas within a Member State. Moreover, as the Commission has stated, it has not been proved that that approach would have resulted in a fairer allocation of the obligation to distil.

148. In the light of the foregoing, I consider that the Commission did not rely on incorrect facts or manifestly err in its assessment of the facts when it adopted the fourth indent of Article 4(2) of Regulation No 441/88, and that it acted within the limits of the discretion accorded it by the basic provision of Article 39(3) of Regulation No 822/87.

D — *Questions 6 and 7: extension of the time-limit for producers to deliver the quantities for distillation*

149. The sixth and seventh questions concern the validity of Article 1(1) of Commission Regulation No 3151/94, which extended until 29 January 1995 the time-limit by which wine producers had to deliver table wine from the 1993/94 wine year for compulsory distillation.

(1) Question 6: infringement of the law

150. In its sixth question, the national court casts doubt on the validity of Article 1(1) of Commission Regulation No 3151/94, by reason of infringement of the law, in particular of Article 39(1) of Regulation No 822/87 in that the preconditions laid down by that provision were not met.

151. According to the national court and Mr Zaninotto, it is illogical to try to restore stability to the market in 1995 when the instability relates to the preceding 1993/94 wine year. Extending the time-limit for compulsory distillation means that such distillation is no longer a short-term measure, as required by Article 39(1) of Regulation No 822/87, and Article 1(1) of Regulation No 3151/94 is therefore invalid because it has no legal basis.

152. According to Mr Zaninotto, since there was no table wine from the 1993/94 wine year to deliver for compulsory distillation the price of wine intended for distillation increased abnormally. By extending the time-limit within which each producer had to deliver

for compulsory distillation the quantities of table wine required of him in respect of the 1993/94 harvest, Regulation No 3151/94 implicitly recognised that the producers concerned had to resort to wine produced in the following 1994/95 wine year in order to meet that obligation.

153. That line of argument cannot be accepted. In my view, it follows from the objective of the Community legislature when it adopted Regulation No 3151/94 that the validity of the provision concerned cannot be called into question.

154. Specifically, the Commission states in the fifth recital in the preamble to Regulation No 3151/94 that 'to take account of the Community provisions on concluding long-term storage contracts, ... the time-limits have been extended by Commission Regulation (EC) No 1960/94; ... however, for reasons peculiar to certain wine-producing regions, it has not been possible to satisfy the delivery obligations by the time-limit laid down; ... *to avoid penalising the wine producers concerned too heavily*, they should still be permitted to discharge their obligations as regards compulsory distillation for the 1993/94 wine year, with the appropriate penalty measures taken into account ...' (emphasis added).

155. In other words, as the Commission states, it is clear from that recital that the extension of the time-limits for delivering table wine for distillation was decided on for specific and objective reasons. The extension by 140 days, from 11 September 1994 until 29 January 1995, was an exceptional measure, adopted in order to take into account the need to assist producers subject to the obligation to distil, but also in order to encourage the distillation of wine covered by long-term storage contracts. Indeed, by Regulation No 1960/94 the Commission authorised the producers concerned to terminate those contracts so that such wine could also be delivered for compulsory distillation up until 27 August 1994.

156. In addition, since producers from certain regions were not able to deliver their production for compulsory distillation in time, the time-limit was extended by Regulation No 3151/94 until 29 January 1995 so that they could deliver their required quantity of table wines later, subject however to a reduction in the price which they would be paid. That assistance was intended to preclude the risk of their being fined under national law.

157. As the Commission rightly states, it was an exceptional measure, which it adopted under the powers conferred on it by Article 39(11) of Regulation No 822/87, with the agreement of the Management Committee for Wine, and one which is clearly favourable to producers like Mr Zaninotto himself who were behind in complying with their obliga-

tions. In other words, the Commission acted within the limits of the powers of management conferred on it under Regulation No 822/87.

158. Furthermore, that measure was also designed to improve market conditions, since it sought to prevent large quantities of wine which had not been distilled during one wine year from being carried over to the following years and, ultimately, to avoid, first, the imposition of additional distillation costs in the subsequent year and, secondly, the very system of compulsory distillation being put at risk.

(2) Question 7: infringement of the principle of proportionality

159. By its seventh question, the national court again casts doubt on the validity of Article 1(1) of Regulation No 3151/94, on the ground that it offends against the principle of proportionality which must govern the actions of the Community institutions.

160. Since the Commission imposed the distillation of a certain quantity of table wine after the wine year to which the stabilisation measures related (1993/94) had ended and a new wine year (1994/95) had begun, the national court considers that the disputed provision does not in any way serve the objective laid down in the legislation governing the common organisation of the market in wine and that it therefore offends against the principle of proportionality. In other words, it does not constitute the appropriate and necessary means of attaining the objective sought, which was to improve conditions in the market in wine during the 1993/94 wine year.

161. As regards the case-law of the Court regarding the principle of proportionality, I would refer back to my comments above. Likewise, as regards the objective of the contested legislation as stated in the fifth recital in the preamble to Regulation No 3151/94, I would refer to the analysis regarding the sixth question referred to the Court.

162. In my view, the extension of the time-limit for delivering table wine for distillation is a necessary and appropriate means of improving conditions in the market in wine within a particular wine year and the corresponding assessment by the Commission is not manifestly wrong. Quantities of wine which have not been distilled during one wine year must still be distilled even if the next year has already begun; otherwise there is a risk, as the Commission rightly points out, that the whole system of compulsory distillation, which seeks to restore stability to a market suffering from a surplus of table wine, will be rendered pointless.

VII — Conclusion

163. I therefore propose that the answer to the questions referred to the Court by the Pretura Circondariale di Treviso, Sezione Distaccata di Conegliano, should be as follows:

The above analysis has revealed no factor of such a kind to affect the validity of:

— the fourth indent of Article 1(3) of Commission Regulation (EC) No 343/94 of 15 February 1994 opening compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87 and derogating for the 1993/94 wine year from certain detailed rules for the application thereof;

— Article 1(1)(c) and the second subparagraph of Article 1(2) (and the annex, to the extent that it concerns Region 4) of Commission Regulation (EC) No 465/94 of 1 March 1994 fixing for the 1993/94 wine year the percentages of table wine production to be delivered for compulsory distillation as provided for in Article 39 of Council Regulation (EEC) No 822/87, in Regions 3 and 6, as amended by Commission Regulation (EC) No 610/94 of 18 March 1994;

— Article 39(4) of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine;

— the fourth indent of Article 4(2) of Commission Regulation (EEC) No 441/88 of 17 February 1988 laying down detailed rules for applying compulsory distillation as referred to in Article 39 of Council Regulation (EEC) No 822/87; or

— Article 1(1) of Commission Regulation (EC) No 3151/94 of 21 December 1994 introducing a further derogation from the detailed rules for the delivery by producers of the table wine they are required to deliver for compulsory distillation in respect of the 1993/94 wine year.