

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber, Extended
Composition)

29 June 1995 *

In Case T-183/94,

Cantina cooperativa fra produttori vitivinicoli di Torre di Mosto and Others,
represented by Ivone Cacciavillani, of the Venice Bar, with an address for service
in Luxembourg at the Chambers of Alain Lorang, 51, Rue Albert 1er,

applicants,

v

Commission of the European Communities, represented by Eugenio de March,
Legal Adviser, acting as Agent, assisted by Alberto Dal Ferro, of the Vicenza Bar,
with an address for service in Luxembourg at the office of Georgios Kremlis, of
the Commission's Legal Service, Wagner Centre, Kirchberg,

defendants,

supported by

* Language of the case: Italian.

Council of the European Union, represented by Arthur Brautigam, Adviser in the Legal Service, and Diego Canga Fano, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

intervener,

APPLICATION for the annulment of several Community provisions relating to compulsory distillation in the wine sector,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Third Chamber, Extended Composition),

composed of: J. Biancarelli, President, C. P. Briët, C. W. Bellamy, P. Lindh, and J. Azizi, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and relevant legislation

- 1 By application received at the Court Registry on 29 April 1994, 43 cooperatives, groups of wine-growers and wine-growers acting individually brought an action

under the fourth paragraph of Article 173 of the Treaty establishing the European Community ('the EC Treaty') for the annulment of a number of Community provisions relating to compulsory distillation in the wine sector.

2 It is appropriate *in limine* to describe the purpose of operations for the compulsory distillation of table wine under the common organization of the market in wine. The relevant basic regulation is Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine (OJ 1987 L 84, p. 1), the 44th recital in the preamble to which 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'.

3 Article 39(1) of Regulation No 822/87 provides as follows:

'1. 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 utilization by more than four months' supply, or
- (b) production exceeds the level of normal utilization 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.’

4 Under Article 39(2) of Regulation No 822/87, ‘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’.

5 Article 39(3) of the regulation provides that:

‘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.’

6 According to Article 39(4) of the regulation:

‘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,
- may vary between regions according to yields obtained in the past,
- may be nil for producers whose yields per hectare are less than a level to be determined.

The quantity of table wine to be delivered for distillation by each producer shall be equal to that determined in accordance with the third subparagraph.’

7 Under Article 39(5) of Regulation No 822/87:

‘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.’

8 Under Article 39(11) of the regulation, if ‘difficulties likely to jeopardize 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’, that is to say, in accordance with a procedure whereby the Management Committee for Wine may vote by the majority provided for in Article 148(2) of the EEC Treaty.

Article 39(9) of Regulation No 822/87 provides as follows:

‘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,

— ...’.

According to Article 1(6) of Regulation No 822/87, as amended by Council Regulation (EEC) No 1734/91 of 13 June 1991 (OJ 1991 L 163, p. 6), the wine-growing year means the period beginning on 1 September each year and ending on 31 August of the following year.

- 11 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 (OJ 1987 L 369, p. 59) provides that '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'; seven classes of yield are specified in that article.
- 12 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 (OJ 1988 L 45, p. 15) specifies the production regions of the Community: region 4 corresponds to Italy.
- 13 Article 12(4) of Regulation No 441/88 provides that '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 is to 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 are to be reduced by the same amount.'

According to Article 12(5) of that regulation, distillation operations may not be carried out after 31 August 1994.

- 14 It was in that context 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 (OJ 1994 L 44, p. 9) was adopted. Article 1 of that regulation provides as follows:

‘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 4: 12 150 000 hectolitres,

— ...’.

- 15 Articles 1 and 2 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 (OJ 1994 L 58, p. 2) specify as follows:

Article 1

1. Pursuant to Article 5(1) of Regulation (EEC) No 441/88, production from the 1993/94 harvest shall be broken down into [various] yield classes ... [for 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.

Article 2

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. ...'

¹⁶ Article 1 of Commission Regulation (EC) No 610/94 of 18 March 1994 amending Regulation (EC) No 465/94 (OJ 1994 L 77, p. 12) finding that Italy had communicated the table wine production figures broken down by yield class and that, as

a result, the percentages of the production of each producer which must be delivered for distillation should be fixed for Region 4, provides as follows:

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

1. ...

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 111, 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.”;

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.’

¹⁷ 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 (OJ 1994 L 198, p. 96), the Commission extended, by way of derogation from the first indent of Article 12(4) and Article 12(5) of Regulation No 441/88, the period for the delivery of table wine to a distillery until 27 August 1994 and the period fixed for distillery operations to 20 September 1994.

¹⁸ Lastly, 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 (OJ 1994 L 332, p. 32), as rectified (OJ 1994 L 341, p. 76), extended, by way of derogation from Regulation No 343/94 and the second subparagraph of Article 12(4) and Article 12(5) of Regulation No 441/88, until 29 January 1995 the period for delivering wine for compulsory distillation for the 1993/1994 marketing year.

Procedure and forms of order sought

19 It was in this context that the Cantina cooperativa fra produttori vitivinicoli di Torre di Mosto and 42 other applicants brought this action for the annulment of the following provisions:

- the fourth indent of Article 1(3) of Regulation No 343/94, which fixes at 12 150 000 hectolitres the quantity to be distilled in 'region 4' for the 1993/94 wine year;
- Article 1(1)(c), the second subparagraph of Article 1(2) and Article 1(3) (annex as regards the part relating to region 4) of Regulation No 465/94, as amended by Regulation No 610/94, as far as the part relating to 'region 4' is concerned;
- any other measure connected with and/or antecedent to those provisions,

while pleading, incidentally, under Article 184 of the EC Treaty that the following provisions are invalid:

- Article 39(4) of Regulation No 822/87, for infringing the principle of proportionality, in so far as it provides that the quantity to be distilled by each producer subject to the obligation is to be equal to a percentage determined on the basis of the 'yield per hectare';
- the fourth indent of Article 4(2) of Regulation No 441/88 relating to 'region 4' for infringement of the law.

- 20 By document lodged at the Court Registry on 25 May 1994, the Commission raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure. The applicants submitted observations on that objection of inadmissibility on 5 July 1994.
- 21 In parallel, by document registered at the Court on 24 May 1994 under No T-183/94 R, the applicants applied for the suspension of the operation of the contested provisions, claiming that the Court should: 'Order the suspension of the operation of the provisions concerned to the extent indicated'. By document registered on 20 June 1994, the applicants made it known that they wished to discontinue their application for interim measures. By order of 11 July 1994, the President of the Court of First Instance ordered Case T-183/94 R to be removed from the register and ordered the applicants to pay the costs of the proceedings for interim measures.
- 22 By document lodged at the Court Registry on 11 July 1994, the Council submitted an application to intervene in support of the form of order sought by the Commission; the applicants and the Commission stated by letters received at the Registry on 2 and 8 August 1994 respectively that they had no objection to this.
- 23 After being granted leave to intervene by order of the President of the Third Chamber, Extended Composition, of 16 September 1994, the Council lodged its statement in intervention on 17 October 1994, on which the applicants submitted their observations by document of 14 November 1994.
- 24 On 1 February 1995, the applicants lodged a supplementary document pursuant to Article 48(2) of the Rules of Procedure concerning new pleas which might be raised during the proceedings. By documents lodged on 21 and 24 February 1995

respectively, the Commission and the Council submitted observations on those new legal arguments.

25 The applicants claim that the Court should:

- annul the contested measures;
- order the Commission to pay the costs.

26 The Commission claims that the Court should:

- declare the application inadmissible;
- order the applicants to pay the costs.

27 In their observations on the objection of inadmissibility, the applicants claim that the Court should:

- proceed to consider the substance of the application;
- declare the application admissible and annul the contested measures, while ordering the defendant to pay the costs.

Admissibility of the application

Summary of the parties' arguments

- 28 The Commission argues that the application is inadmissible on the ground that the applicants are — individual or associated — wine producers carrying on their activities in part of Italy, namely the Veneto. Essentially, they are contesting the system of compulsory distillation, based on Article 39 of Regulation No 822/87, which is applied on the basis of the concept of 'yield per hectare', as implemented most recently by Article 1 of Regulation No 343/94 and Article 1 of Regulation No 465/94. However, the Commission maintains that, by virtue of consistent case-law of the Court of Justice and the Court of First Instance, the measures whose annulment is sought by the applicants are in fact regulations which are of neither direct nor individual concern to them.
- 29 The Commission considers that in this case none of the provisions contested by the applicants affects their legal position or designates them as addressees of a measure. The fact that they are concerned by the contested provisions depends on a factual situation, namely their capacity as wine producers. Manifestly, the wine-growers of the Veneto region cannot be regarded as the addressees of the contested provisions. Admittedly, there is no doubt that they do also concern producers in the Veneto, but solely in so far as those producers are precisely wine-growers falling within a class of economic operators which may be defined on the basis of objective circumstances.
- 30 As for the applicants' claim that certain of the contested provisions are of individual concern to them in so far as they are diligent operators who distilled in preceding years all the quantities which they were required to distil and would therefore be obliged to carry out extra distillation in order to make up for the quantities not distilled by other operators in the wine sector, the Commission considers that

that circumstance does not, in the light of the case-law of the Court of Justice and the Court of First Instance, enable the applicants' position to be differentiated from that of the other operators in the sector.

31 Lastly, the Commission considers that, in any event, the contested measures constitute, formally and substantively, regulations setting out provisions of general scope which are applicable to a category of operators which may be defined in the abstract in their objective capacity of economic operators in the wine-growing sector. Both Regulation No 343/94 fixing the total quantities of table wine to be distilled in the various regions in the 1993/94 wine year and Regulation No 465/91, as amended by Regulation No 610/94, fixing the percentages of table wine production to be delivered for compulsory distillation by each producer in the various regions on the basis of the yield per hectare, each manifestly concern all wine-growers in the Community in their capacity as economic operators in that sector. The mechanisms used to fix the total quantity of table wine distilled per region in the Community and the percentages of table wine which each producer is required to deliver for compulsory distillation correspond, in the Commission's view, to general, abstract criteria and concern wine-growers by virtue of an objective criterion which is applicable in the abstract to any producer who fulfills the objective conditions relating to production, which are specifically determined by the place at which he is growing wine and the yield per hectare there.

32 In their observations on the objection of inadmissibility, the applicants argue, on the contrary, that the objection seeks to induce the Community court to ignore its function as the court dealing with the substance of the case. They argue that the contested provisions are a conglomeration of individual provisions of direct concern to them (Joined Cases 41 to 44/70 *International Fruit Company and Others v Commission* [1971] ECR 411). They further point out that they are a group of agricultural cooperatives whose status is guaranteed by the Constitution of the Italian Republic, in particular Articles 2 and 45 thereof, and that as such they farm the land directly and therefore are direct farmers in so far as only persons who directly farm the land are entitled to belong to agricultural cooperatives. In their view, all those factors make it possible to define a specific, differentiated position for the applicants in comparison with wine-growers as a whole, whether in the Community or in the national context.

- 33 Furthermore, the applicants point out that, according to the case-law of the Court of Justice, only detailed examination of the circumstances of the case, having regard to all the relevant legislation, will enable the real nature of the contested measures to be established (judgments in Case 8/55 *Fédération charbonnière de Belgique v High Authority* [1954 to 1956] ECR 245 and 292). They argue that, at the date when the contested measures were adopted, the quantity of table wine to which the distillation measure was to be applied was known and predetermined on the basis of the applicants' declarations.
- 34 Lastly, they claim that they discontinued their application for interim measures because they obtained from the national court, the Tribunale Amministrativo Regionale (Regional Administrative Court), Lazio, a result identical to that which they sought from the Community court hearing applications for interim relief, namely suspension of the operation of the contested decisions until such time as there was a judicial ruling on the substance of the case. In those circumstances, they point out that the national court impliedly assumed that the judgment of the Court of First Instance would relate to the substance of the case. Consequently, a judgment of the Court confined to considering the admissibility of the application would constitute a denial of justice vis-à-vis the applicants.
- 35 The applicants also dealt with the question of the admissibility of their action in the originating application. In that regard, they presented themselves as 'undertakings and individuals representing all economic operators in the Veneto region' concerned with the production of table wine and hence as 'the protagonists and chief addressees of the Common Agricultural Policy ... and of the common organization of the market ... in wine related thereto', and argued that the provisions whose annulment they sought, albeit adopted in the form of a regulation, were of direct and individual concern to them.
- 36 In the applicants' view, the regulations in question are based on information provided by themselves and it also is on that basis that they are applied. The said information (harvest, production and stock declarations) determines the extent of the aggregate and regional distillation obligations. The quantity of 12 150 000 hectolitres was determined on the basis of a forward estimate requiring the Member States to communicate producers' and traders' declarations pursuant to Regulation

No 3929/87. Likewise, the regional breakdown by yield class is the result of the summary provided for in Article 8 of that regulation of the wine-growers' declarations referred to in Articles 1 and 2 of that regulation.

- 37 The applicants argue that, when the contested regulations were adopted, their addressees had already been determined, since the producers involved in the 1993/94 wine year were existing undertakings, identified at that date. Accordingly, those regulations directly provided for obligations on specific persons who had already been determined, even though the precise amount of the distillation obligation depended on a future factor, namely the precise production for the year.
- 38 In the applicants' view, the regulations at issue therefore do not refer to a general and abstract potential class of undertakings or persons but to specific persons constituting a 'closed group'.
- 39 Consequently, in so far as the applicants completely fulfilled their distillation obligation for the 1993/94 wine year, they argue that the wine-growers of the Veneto, who are directly affected by the contested regulations, are suffering individual damage as a result of the provisions whose annulment is sought, in so far as they inevitably and specifically impose additional, unjustified burdens by comparison with wine-growers generally. As a result, as appears from the case-law of the Community judicature, the specific nature of the applicants' factual or legal situation, which distinguishes them from addressees in general of the contested measures, justifies their having *locus standi*, above all since, in view of the 'inertia' of the national authorities, the applicants had to approach the Court in order to avoid serious discrimination against them from materializing.
- 40 The applicants claim that the objection of inadmissibility should be rejected, at the very least and without any reservation, as far as the cooperatives are concerned.

41 In its statement in intervention, the Council supports the Commission's arguments and observes in particular that, as a result of Article 184 of the Treaty, the applicants are not entitled to plead the illegality of Article 39(4) of Regulation No 822/87 and Article 4(2) of Regulation No 441/88 unless their application satisfies the conditions for admissibility laid down by Article 173 of the EC Treaty. As has been consistently held, however, in order for individuals to be individually concerned by a provision of Community law, their legal position must be affected by reason of circumstances which differentiate them from all other persons and distinguish them individually in the same way as an addressee (Case C-257/93 *Van Parijs v Council and Commission* [1993] ECR I-3335). But the conditions laid down by that case-law are certainly not fulfilled in this case, since the applicants are concerned by the contested provisions only in their objective capacity as operators carrying on an economic activity in the wine sector, in the same way as any other person in that position.

42 The Council further observes that, in so far as the applicant cooperatives constitute trade organizations grouping producers subject to the distillation obligation, their application for annulment is inadmissible on the basis of consistent case-law (Joined Cases 16 and 17/62 *Confédération nationale des producteurs de fruits et légumes and Others v Council* [1962] ECR 471, Joined Cases 19 to 22/62 *Fédération nationale de la boucherie en gros et du commerce en gros des viandes and Others v Council* [1962] ECR 491, Case 117/86 *UFADE v Council and Commission* [1986] ECR 3255 and Case 55/86 *Arposol v Council* [1988] ECR 13).

43 In their 'supplementary document' of 1 February 1995, the applicants argued that, as a result of the new provisions of Regulation No 3151/94 extending the period for delivering table wine for compulsory distillation beyond the 1993/94 wine year, which ended on 31 August 1994, the contested provisions were also invalid in so far as they no longer satisfied and were no longer capable of meeting the need for remedying the imbalance in the 1993/94 wine year during that year, but now sought, on the contrary, to rectify that imbalance by enforcing the compulsory distillation of table wine during the subsequent wine year.

- 44 The Commission, supported by the Council, objects that the provisions of Regulation No 3151/94 cannot be regarded as new facts in relation to this case, since their purpose is solely to extend the period for enforcing the distillation obligation already provided for by the provisions contested in the application.
- 45 The Commission argues that, in any event, the applicants have not proved what constitutes the alleged novelty introduced by Regulation No 3151/94 by comparison with the matters set out in the application.

Findings of the Court

- 46 Under Article 114(3) of the Rules of Procedure, where an objection of inadmissibility is raised before it by the defendant, the remainder of the proceedings are to be oral, unless the Court decides otherwise; in this case, the Court considers that it has been sufficiently informed as a result of its examination of the documents in the case file and that there is no need to open oral proceedings.
- 47 As the Court of Justice and the Court of First Instance have consistently held, the fourth paragraph of Article 173 of the Treaty empowers individuals to contest any decision which, although in the form of a regulation, is of direct and individual concern to them. The objective of that provision is, in particular, to prevent the Community institutions from being in a position, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually; it is thus made clear that the choice of form cannot change the nature of the measure (judgment of the Court of Justice in Joined Cases 789 and 790/79 *Calpak SpA and Società Emiliana Lavorazione Frutta SpA v Commission* [1980] ECR 1949 and order of the Court of First Instance in Case T-476/93 *FRSEA and FNSEA v Council* [1993] ECR II-1187).

- 48 Moreover, as the Court of Justice and the Court of First Instance have consistently held, the general scope and hence the legislative nature of a measure are not called in question by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at a given moment with a greater or lesser degree of precision as long as it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to the objective of the latter (Case 6/68 *Zuckerfabrik Watenstedt v Council* [1968] ECR 409, Case 64/69 *Compagnie française commerciale et financière v Commission* [1970] ECR 221, Case 101/76 *Koninklijke Scholten Honig v Council and Commission* [1977] ECR 797, Case 123/77 *Unicme and Others v Council* [1978] ECR 845, *Calpak SpA and Società Emiliana Lavorazione Frutta SpA v Commission*, cited above, Case 242/81 *Roquette Frères v Council* [1982] ECR 3213, Case 26/86 *Deutz and Geldermann v Council* [1987] ECR 941, Joined Cases 97, 193, 99 and 215/86 *Asteris and Others and Greece v Commission* [1988] ECR 2181; Case 160/88 R *Fédération européenne de la santé animale and Others v Council* [1988] ECR 4121; Joined Cases C-15/91 and C-108/91 *Buckl and Others v Commission* [1992] ECR I-6061, Case C-213/91 *Abertal and Others v Commission* [1993] ECR I-3177, Case C-131/92 *Arnaud and Others v Council* [1993] ECR I-2573, order of 21 June 1993 in Case C-288/93 *Comaco v Council*, not published in the European Court Reports, order in *FRSEA and FRNSEA v Council*, cited above, and Case C-309/89 *Codorniu v Council* [1994] ECR I-1853).
- 49 Also as the Court of Justice and the Court of First Instance have consistently held, in order for economic operators to be regarded as being individually concerned by the measure whose annulment they seek, their legal position must be affected by reason of circumstances which differentiate them from all other persons and distinguish them individually in the same way as an addressee (see *Comaco v Council*, *FRSEA and FRNSEA v Council* and *Codorniu v Council*, cited above).
- 50 In this case, the legislative provisions whose annulment is sought either directly or through the objection of illegality raised against Article 39(4) of Regulation No 822/87 or Article 4(2) of Regulation No 441/88 concern all producers of table wine in accordance with objective criteria.

- 51 Accordingly, contrary to the applicants' arguments, far from affecting them by reason of certain characteristics peculiar to them or circumstances which differentiate them from any other operator, those provisions are addressed, in abstract, general terms, to indeterminate classes of persons and apply to objectively determined situations.
- 52 The contested legislative provisions are not aimed specifically at the applicants and are of concern to them only in their objective capacity as producers of table wine in the same way as they are to any other economic operator actually or potentially in an identical situation.
- 53 As regards in the first place the submissions seeking the annulment of the fourth indent of Article 1(3) of Regulation No 343/94 in so far as it fixed at 12 150 000 hectolitres the quantity to be distilled in region 4, that is so say, Italy, for the 1993/94 wine year, the Court observes that, in adopting that regulation implementing Regulation No 822/87, the Commission based itself on the following objective data, as they emerge from the preamble to Regulation No 343/94: 'Whereas 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; whereas the conditions laid down in Article 39(1) of Regulation (EEC) No 822/87 for initiating compulsory distillation are therefore fulfilled; [w] hereas 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; whereas that quantity is based on the forward estimate to take account of the unbalanced situation, characterized 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 ...'.
- 54 It follows from the foregoing and from the analysis of the system of Regulation No 343/94 that, in order to determine, on the one hand, the total quantity of table

wine to be distilled and, on the other, the quantities to be distilled in the various regions referred to in Article 4(2) of Regulation No 441/88, the Commission based itself on objective criteria, taking account of all production, stocks and availability at the end of the marketing year of all economic operators in the European Economic Community and, as far as region 4 (Italy) was concerned, of all producers in that Member State and not only producers in the Veneto region, such as the applicants.

55 Secondly, as regards the submissions seeking the annulment of Regulation No 610/94 (see paragraph 16 above) amending Regulation No 465/98 (see paragraph 15 above), the Court likewise observes that the preamble to that regulation states as follows: 'Whereas 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; whereas the percentages of the production of each such producer which must be delivered for distillation should therefore be fixed; whereas, while being based on objective criteria, those percentages must be adapted to the situation of each region; whereas 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; whereas the yield classes should accordingly set out only the quantities covered by the production declarations, on which the scale is based; ... whereas, 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; whereas the scale in question must be incremental, thus penalizing the highest yields ...'.

56 It appears from the combined provisions of Regulations Nos 465/94 and 610/94 both that in order to determine the production obtained from a yield expressed in hectolitres per hectare for region 4 (Italy) and that in order to fix the average yield per hectare in region 4, the Commission based itself on aggregate, objective data which were communicated to it by the authorities of that Member State as regards the production of table wine and the breakdown of that production by the various

yield classes. In no case does it appear from the case file that the specific situation of producers of table wine in the 'Veneto region' was taken into account in order to establish those figures, which were worked out, on the one hand, from all the Community data and, on the other, from all the data relating to the territory of Italy as a whole.

57 In that regard, the applicants' allegations relating to the purported 'inertia' of their own national authorities, in particular as regards the provision to the Community authorities of precise, up-to-date data relating to the yield per hectare in the Veneto region, are not such as to call into question this assessment.

58 Likewise, in so far as the applicants seem to be arguing that the provisions of regulations at issue are of individual concern to them in their capacity as particularly diligent economic operators who have, in preceding years, distilled all the quantities required of them and would, as a result, be obliged to effect purchases outside in order to carry out additional distillation which would be wrongly imposed on them, in order to make up for the quantities not distilled by other operators in the same sector and in other Italian regions, it is clear that that circumstance, if it were proved, would not, in any event, be capable of sufficiently differentiating the applicants' position as compared with that of any other operator in the wine sector so as distinguish them individually in the same way as a person addressed by the legislative provisions whose annulment is sought.

59 Lastly, the Court considers that, in order to defeat the objection of inadmissibility raised by the Commission, the applicants may not successfully rely on their situation under the constitutional provisions of their national legal system or argue that such a finding of inadmissibility would deny them justice. Nor are they justified in

arguing that a decision of a national court could be capable of prompting this Court to rule on the substance of this dispute.

60 It follows from the whole of the foregoing that the contested provisions of regulations are of concern to the applicants only in their objective capacity as producers of table wine in the same way as any other economic operator in the same market and that, hence, as the applicants have not proved that they are individually concerned by the provisions of regulations whose annulment they seek, the objection of inadmissibility raised by the Commission should be upheld, without its even being necessary to consider the question raised by the Council as to whether, inasmuch as they represent a category of economic operators, the applicant cooperatives, as such, have *locus standi* to seek the annulment of provisions affecting the general interest of that class.

61 In addition and in any event, the Court observes that the applicants are not thereby deprived of any procedural means of asserting their rights. If they believe that their case is well founded, they should challenge in the competent national court the national measures implementing the aforementioned Community provisions, it being for the national court to refer to the Court of Justice under Article 177 of the EC Treaty the question of the validity of the said Community provisions and, if appropriate, to suspend the enforcement of the national measures adopted in order to implement the Community provisions in question pending the judgment of the Court of Justice giving a preliminary ruling, in the manner referred to in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraphs 17 to 33.

62 Since, as has just been held, the whole of the application is inadmissible, there is no need to consider the new arguments raised by the applicants in order to contest the legality of the contested provisions on the ground of the adoption, after the application was brought, of Regulation No 3151/94 extending the period for distillation

beyond the 1993/94 wine year and there is no need, in any event, to rule on whether those new arguments are capable of being described as new pleas within the meaning of Article 48(2) of the Rules of Procedure.

Costs

- 63 Under the first subparagraph of Article 87(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings; since the applicants have been unsuccessful and the Commission has applied for costs, the applicants must be ordered to pay the costs.
- 64 Under the first subparagraph of Article 87(4) of the Rules of Procedure, institutions which intervened in the procedure are to bear their own costs. Consequently, the Council must bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber, Extended Composition)

hereby:

1. Dismisses the application as inadmissible;
2. Orders the applicants to pay the costs;
3. Orders the Council to bear its own costs.

Luxembourg, 29 June 1995.

H. Jung

J. Biancarelli

Registrar

President