

2. Within the framework of the common organization of the market in wine, reference prices, expressed in units of account, are to enable the prices of wine from non-member countries to be brought to the level of prices within the Community, whereas the monetary compensatory amounts system is to enable, in the case of fluctuating exchange rates, differences recorded in prices expressed in national currency following changes in exchange rates to be made up and in particular to prevent the disturbances in trade which might result therefrom.
3. In the absence of a definition of any special concept of "quality wine" coming from third countries as distinct from the concept of "table wine", it must be inferred that for the purposes of Community rules, in particular those relating to the monetary compensatory amounts system, any wine coming from a non-member country is — in the absence of any exception providing otherwise — to be treated as table wine.
4. A regulation is to be regarded as published throughout the Community on the date borne by the issue of the Official Journal containing the text of that regulation. However, should evidence be produced that the date on which an issue was in fact available does not correspond to the date which appears on that issue, regard must be had to the date of actual publication.
5. Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.
6. The system of monetary compensatory amounts introduced by Regulation No 974/71 implies in principle that the measures adopted take effect as from the occurrence of the events which give rise to them, so that in order to make them fully effective it may be necessary to provide for the applicability of newly-fixed monetary compensatory amounts to facts and events which occurred shortly before the publication of the regulation fixing them in the Official Journal.

In Case 98/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesfinanzhof (Federal Finance Court) for a preliminary ruling in the proceedings pending before that court between

FIRMA A. RACKE, Bingen am Rhein,

and

HAUPTZOLLAMT (Principal Customs Office) MAINZ,

on the validity of Regulations No 649/73 of the Commission of 1 March 1973 fixing the monetary compensatory amounts (Official Journal L 64 of 9 March 1973, p. 7), No 741/73 of the Commission of 5 March 1973 altering the monetary compensatory amounts (Official Journal L 71 of 19 March 1973, p. 1) and No 811/73 of the Commission of 23 March 1973 altering the monetary compensatory amounts (Official Journal L 79 of 27 March 1973, p. 1) and on the interpretation of Article 191 of the EEC Treaty as to the time at which a regulation is to be regarded as published and as to the date from which the above-mentioned regulations are to be applied,

THE COURT,

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keefe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl

Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. Between 9 and 30 March 1973 Firma A. Racke, the appellant in the main action, put into free circulation Yugoslavian red wine and white wine coming

under tariff subheadings 22.05 C I and C II, which had been removed from its private customs warehouse. The Hauptzollamt (Principal Customs Office) Mainz, the respondent in the main action, charged monetary compensatory amounts on that importation under Regulations No 649/73 of the Commission of 1 March 1973 fixing the monetary compensatory amounts (Official Journal L 64 of 9 March 1973, p. 7), No 741/73 of the Commission of 5 March 1973 altering the monetary compensatory

amounts (Official Journal L 71 of 19 March 1973, p. 1) and No 811/73 of the Commission of 23 March 1973 altering the monetary compensatory amounts (Official Journal L 79 of 27 March 1973, p. 1).

2. The appellant in the main action lodged an objection against the charging of those compensatory amounts. The objection was unsuccessful. The appellant then brought an action before the Finanzgericht (Finance Court) Rheinland-Pfalz, seeking repayment of the monetary compensatory amounts charged by the Hauptzollamt. The Finanzgericht dismissed the action.

The appellant then appealed to the Bundesfinanzhof (Federal Finance Court) against the decision of the Finanzgericht.

3. Annex I, No 6, to Regulation No 649/73 for the first time extended monetary compensatory amounts to red and white wine of the same kind as that imported by the appellant. Regulations No 741/73 and No 811/73 adjusted the said amounts to changes in the exchange rates of currencies.

According to Article 3 of Regulation No 649/73 of 1 March 1973, that regulation entered into force "on the day of its publication in the Official Journal of the European Communities". It was published in Official Journal L 64 which, although it bore the date of 9 March 1973, was not available at the sales office of the Office for Official Publications of the European Communities until 12 March 1973 owing to administrative difficulties. In Germany, it was distributed the following day. According to the said Article 3, the regulation applied as from 26 February 1973.

Regulation No 741/73 of 5 March 1973 entered into force on 19 March 1973, the day of its publication, but applied as from 5 March 1973. Regulation No

811/73 of 23 March 1973 entered into force on 27 March 1973, the day of its publication, but applied as from 26 March 1973.

It is to be noted that "in order to remove all possible doubt", the German Minister of Finance decreed that for the period from 26 February to 8 March monetary compensatory amounts were not to be charged on goods which had been brought under the system for the first time by Regulation No 649/73.

4. It appears from the order making the reference that in its appeal on a point of law to the Bundesfinanzhof the appellant argued, first, that according to the preamble to Regulation No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (Official Journal, English Special Edition 1971 (I), p. 257) no such compensatory amounts should be imposed on goods where the goods have not been imported at lower prices owing to fluctuations in the parities of currencies. This is in particular the case if the import agreements were concluded and executed in the currency the value of which had increased.

The appellant also argued before the Bundesfinanzhof that the Community intervention system in the wine sector for which provision is made in Article 9 (3) of Regulation No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (Official Journal, English Special Edition 1970 (I), p. 234) must be regarded as being protected by means of the institution of reference prices against imports of wine at lower prices from non-member countries. As numerous non-member countries have guaranteed that they will comply with

the reference prices under Regulation No 816/70 and their exports of wine to the Community are therefore not subject to levies, in the appellant's submission it appears not to be permissible nevertheless to charge monetary compensatory amounts on imports of such wine.

Furthermore, the charging of a monetary compensatory amount would be lawful only if the products were products for which intervention measures were provided within the framework of the common organization of the market in wine. Doubtless, reference prices have been fixed for all imports of wine from non-member countries. However, that provision is intended to cover only wines for immediate consumption, as the intervention system laid down by the common organization of the market in wine is exclusively intended to protect Community table wine and not quality wine. In the appellant's submission, there was therefore no need to charge monetary compensatory amounts on wine from non-member countries which is demonstrably to be classified as quality wine.

In the light of the statistics produced by the appellant it is submitted that it is impossible to speak of disturbances in the market in wine at the material time, either as regards wine in general or as regards quality wine in particular; therefore the conditions imposed by Regulation No 974/71 for the charging of monetary compensatory amounts were not fulfilled.

Finally the appellant submits that the Commission was not empowered to declare that its regulations had retro-active effect.

5. By an order of 21 March 1978 the Bundesfinanzhof stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

1. Are Regulations (EEC) Nos 649/73 of 1 March 1973, 741/73 of 5 March 1973 and 811/73 of 23 March 1973 of the Commission valid even in so far as they each fix in Annex I, No 6, monetary compensatory amounts for imported red and white wines under tariff subheadings 22.05 C I and C II without making any distinction between the two?
2. Is a regulation to be regarded as published within the meaning of Article 191 of the Treaty establishing the European Economic Community:
 - (a) on the date borne by the Official Journal in question;
 - (b) at the time when the Official Journal in question is in fact available at the Office for Official Publications of the European Communities; or
 - (c) at the time when the Official Journal in question is actually available in the territory of the particular Member State?
3. Was Regulation (EEC) No 741/73 of the Commission of 5 March 1973 also applicable to wine which was first made subject to monetary compensatory amounts by Regulation (EEC) No 649/73 of the Commission of 1 March 1973 and which was removed from a private customs warehouse before the last-mentioned regulation was in fact published?
4. If Question 3 is answered in the negative: was Regulation (EEC) No 649/73 of the Commission of 1 March 1973 applicable to the said wine?

6. The order making the reference was lodged at the Court Registry on 26 April 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the Commission of the European Communities.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court by the Commission

A — Question 1

1. In answer to the appellant's first argument before the Bundesfinanzhof, the Commission states that in its judgment of 24 October 1973 in Case 5/73 *Balkan v Hauptzollamt Berlin-Packhof* [1973] ECR 1091, the Court acknowledged that only rules which are generally applicable to all imports or exports and which do not take account either of the currency in which the contracts were concluded or of the time at which they were concluded appear objectively appropriate.

2. In answer to the appellant's arguments, the Commission also observes that the fixing of reference prices and the charging of compensatory taxation are to enable the prices of products coming from non-member countries to be brought to the common level of agricultural prices. On the other hand, the Commission submits that where fluctuating exchange rates depart from the parity the monetary compensatory amounts system is to enable the differences recorded in agricultural prices in national currency following changes in exchange rates to be made up.

In the present case, it is irrelevant, according to the Commission, whether the charging of monetary compensatory amounts did or did not result in a cost price higher than the reference price.

3. As regards the extension of monetary compensatory amounts to quality wines coming from non-member countries, the Commission points out first of all that the distinction drawn between table wine and quality wine in regard to Community products cannot be applied to wine coming from non-member countries, because classification as quality wine requires constant supervision of the wine-making and of the wine-producing regions, which the Community cannot carry out in non-member countries.

Even if it is claimed that it would be possible to establish a distinction between table wines and quality wines in regard to wine from non-member countries, there is no doubt, in the Commission's submission, that the monetary compensation system can be applied even to "quality" wine coming from non-member countries: it is a question of a product coming within a common organization of the market, the price of which is a function of the price of products covered by Community intervention arrangements (Article 1 (2) (b) of Regulation No 974/71); this follows from Article 1 (1) and Articles 8 to 14 of Regulation No 816/70.

Consequently, the Commission takes the view that in order to be able to answer Question 1, it is necessary, in accordance with Regulation No 974/71, to determine only whether in February and March 1973 changes in exchange rates of currencies might give reason to fear

that disturbances in trade would appear (Article 1 (3)).

The Commission next explains the considerations which led it to introduce in Spring 1973 monetary compensatory amounts applicable to all red and white wine coming from non-member countries. In this connexion it states *inter alia* that as from 13 February 1973 the depreciation of the Italian lira and the revaluation of the German mark gave reason among other things to fear disturbances in the French and German wine markets. In accordance with the provisions of Article 1 (2) (a) of Regulation No 974/71, the monetary compensation laid down by Regulation No 649/73 for wine in intra-Community trade was restricted to table wine. Owing to the price relationship between Community table wine and red and white wine imported from non-member countries, it was necessary also to apply the monetary compensatory amounts system in its entirety to the latter; otherwise, that wine would have enjoyed a considerable advantage as regards competition, particularly in relation to Italian table wine. Having regard to the rapidity and scale of the changes in the monetary situation in Spring 1973, the Commission could adopt only regulations concerning all wine coming from non-member countries. Consequently it considers that it was not guilty either of a wrong assessment of the economic situation or of a misuse of powers.

B — Question 2

The Commission recalls that in its judgment of 31 March 1977 in Case 88/76, *Société pour l'Exportation des Sucres v Commission* [1977] ECR 709, the Court held that the time at which a regulation is to be regarded as published within the meaning of Article 191 of the Treaty is the day of its actual publication in the Official Journal. According to the Commission, the Official Journal is to be

regarded as published at the time of its publication by the Office for Official Publications in Luxembourg. The principle of legal certainty and the principle of equal treatment for all traders require that regulations should enter into force at the same time throughout the territory of the Community; anyone who takes the necessary steps can procure the Official Journal upon its publication in Luxembourg; as from that time, the legislature loses its unfettered authority over the text; if reference had to be made to the time when the Official Journals were available in the different Member States, considerable loss of time would have to be accepted owing to inevitable delays.

The Commission also submits that its opinion corresponds in essence to the situation in most of the Member States, in which actual delivery of the national official publication to a central organization suffices to allow legislative provisions to enter into force in the whole of the country. The situation in France is however an exception, because laws and decrees enter into force in Paris in principle one day after their publication in the French *Journal Officiel*, and as regards the rest of the national territory in principle one day after the arrival of the French *Journal Officiel* containing the legislative texts in the chief town of the "département" or "arrondissement" (department or administrative district). Nevertheless in France in urgent cases publication may be carried out by means of posting-up. However, in the Commission's submission, the French example cannot be followed by the Community institutions because the possibility of publishing by means of posting-up is not open to them.

C — Questions 3 and 4

1. The Commission recalls that the Court has already expressly stated, in its judgment of 7 July 1976 in Case 7/76, *IRCA v Amministrazione delle Finanze dello Stato* [1976] ECR 1213, that Regulation No 649/73 validly applies with effect from 26 February 1973. It none the less states its views on the questions referred for a preliminary ruling, because in Case 7/76, unlike the present case, the Court was not yet aware of the delay in the publication of Regulation No 649/73 at the time when it delivered its judgment, and because the earlier judgment concerned the case where new monetary compensatory amounts had been fixed by Regulation No 649/73 for goods already covered by the monetary compensation system.

The Commission submits that if the answer to Question 2 is the one which it suggests, Question 3 concerns the period from 5 to 11 March 1973. It adds that for the purpose of the decision in the main action, the relevant period is from 9 to 11 March 1973.

The Commission then studies the validity of Regulation No 649/73 for the latter period. In its submission, if that regulation was not applicable at that time, the same is true *a fortiori* of Regulation No 741/73.

2. On the issue of the retroactive effect of Regulation No 649/73, the Commission states that the case-law of the Court does not in principle prevent even provisions imposing taxation from having retroactive effect; likewise neither any rules of Community law nor the legal systems of the Member States expressly prohibit such effect.

In this connexion, the Commission also refers to paragraph 24 of the decision of the Court in Case 7/76, *IRCA* (cited above).

In the Commission's submission, there is no reason to protect advantages derived from inevitable administrative delays due to rapid changes in the monetary situation: on the contrary, it follows from Article 3 of Regulation No 974/71 that in the event of any appreciable alteration in the international monetary situation, it is to be expected that new categories of goods will be brought under the monetary compensation system with effect from the time when the monetary fluctuations occur.

Since the Commission's decision as to the inclusion of new goods in the system is discretionary, it cannot be foreseen with certainty in each case. For this reason, in the Commission's view, it must be accepted that in such a situation interested persons cannot be refused all protection of their expectation that the existing legal situation will be maintained. However, the Commission submits that before the publication of the measure adopted in the Official Journal, it can prevent such an expectation from arising on the part of interested persons by making the tenor of its decision generally known in another way or by letting it be understood that a decision is imminent.

Applied to the present case, these general considerations lead the Commission to the following conclusions:

Owing to alterations which it was essential to make to the monetary compensation system following the fall in the lira as from 13 February 1973, new amounts could not be fixed until after

the entry into force of the alterations made to the system by Regulation No 509/73 of the Council of 22 February 1973 (Official Journal L 50 of 23 February 1973, p. 1); after the Management Committee had on the same day given its opinion on the re-adjustment of the compensatory amounts, and the Member States had declared that they would be able to apply those new amounts as from 26 February 1973, it appeared possible to the Commission to give effect to the measures adopted as from that date.

Since, owing to the accession of the new Member States and to the monetary crisis, it was not possible at that time exactly to foresee when a regulation would appear in the Official Journal, and since, having regard to the dramatic situation, it was also not possible to accept delays in the entry into force of the monetary measures decided upon, the Commission considered that it had to extend the validity of certain of those measures to periods shortly prior to publication.

The Commission submits that in view of the monetary crisis, which the mass media in all the Member States reported for several weeks, expectation of the maintenance in force of the monetary measures could only be very limited. Even before the regulations in question were published, the Commission had itself sent the text of them to the administrative authorities in the Member States by telex. Thus the contents of Regulation No 649/73 were communicated to the Member States on 26 February 1973. At that time the said expectation had already ceased to exist for another reason: the Commission had made it known that retroactive charging of the compensatory amounts was to be foreseen for short periods, as appears from the information issued by the "Vereinigte Wirtschaftsdienste".

In the Commission's submission, there is also no expectation deserving protection in the particular case concerning, in this instance, the removal of goods from a private customs warehouse during the period immediately preceding the publication of Regulation No 649/73: private customs warehouses generally belong to large undertakings which must keep themselves constantly informed about the general development of the monetary situation.

3. In the Commission's opinion, the fact that the Official Journal did not appear until 12 March 1973 is irrelevant to the retroactive effect of the regulation: unlike Commission Regulation No 1579/76 (Official Journal L 172 of 1 July 1976, p. 59) which was at issue in Case 88/76, *Société pour l'Exportation des Sucres*, Regulation No 649/73 expressly provides that it applies even to periods which have already elapsed at the time of its publication; the slight delay in the appearance of the Official Journal did not alter the situation provided for.

4. In the Commission's submission, the validity of Regulation No 741/73 for the period beginning on 12 March 1973 may be inferred from the judgment of the Court in Case 7/76, *IRCA* (cited above).

In the Commission's opinion, the application of that regulation to the period from 9 to 11 March 1973 cannot be objected to either: the material conditions for an alteration of the monetary compensatory amounts fixed by Regulation No 649/73 had been fulfilled since 5 March 1973; on 5 March 1973 the Commission had informed the administrative authorities in the Member States by telex of the new amounts applicable, and it appears from the information distributed by the "Vereinigte Wirtschaftsdienste" that interested

persons already knew about them before the rates in force as from 26 February 1973 had been published in the Official Journal; the Commission had not communicated the exact figures, but they could be estimated on the basis of the changes in the exchange rates; finally, Official Journal C 8 of 5 March 1973 contains a concise announcement concerning the alterations made by Regulation No 741/73.

If, before the publication of a regulation, the attention of interested parties is drawn to the fact that it will be retroactively amended by another regulation coming shortly after it, the publication of the former regulation cannot, in the Commission's submission, provide grounds for the protection of expectations concerning the maintenance of the situation which the former regulation brought into being, even if it concerns periods which have elapsed.

The Commission further observes that such a procedure is unusual and requires special justification, since normally every citizen can trust that a provision will not already be out of date when it enters into force and that it cannot be amended with retroactive effect. The Commission submits that in the present case consideration of the critical monetary developments in Spring 1973 and the emergency situation prevailing at the time of the publication of the Official Journal required an exception. In the circumstances of this case it would have been unreasonable to amend a regulation which it had already been decided to adopt but which had not yet been published, since then its publication would have been even further delayed.

5. According to the judgment of the Court in Case 7/76, *IRCA* (cited above), the extension of the validity of Regulation No 811/73 to a short period prior to its publication in the Official Journal cannot give rise to any objections.

III — Oral procedure

1. The appellant in the main action, represented by F. Kreitmair, and the Commission, represented by its Legal Adviser, P. Gilsdorf, acting as Agent, assisted by J. Sack, a member of its Legal Department, presented oral argument at the hearing on 14 November 1978. W. Verheyden, Director of the Office for Official Publications of the European Communities, answered questions put to him by the Court.

2. The appellant in the main action submitted *inter alia* that for reasons pertaining to the rule of law the case-law of the Court on monetary compensatory amounts should not be followed. In this connexion it referred *inter alia* to the judgments of the Court of 22 January 1976 in Case 55/75, *Balkan v Hauptzollamt Berlin-Packhof* [1976] ECR 19, and of 25 May 1978 in Case 136/77, *A. Racke v Hauptzollamt Mainz* [1978] ECR 1245.

In this connexion the appellant in the main action emphasized in particular that in the area in question the Commission should not have any discretionary power as regards inquiry into and determination of facts.

It added that any excess of the margin of discretion must be held to be unlawful even were it is not manifest. Where the Commission is entitled to have only the manifest aspects of its discretionary acts subjected to judicial review, grounds which are not manifest do not have to be revealed for the purpose of review and consequently must be proved by the person disputing them. In the appellant's submission, this is tantamount to conferring immunity upon arbitrary acts which are not manifest, including abuses of discretionary powers and factually incorrect assessments.

The appellant in the main action submitted that a breach of the duty to give a statement of the reasons on which a regulation is based of itself makes the regulation illegal, even where a statement of reasons is given subsequently.

According to the appellant, there is also a presumption of illegality where monetary compensation at the border is fixed in the long term, and this means that the requirements are more stringent as regards the burden of proof on the Commission and the statement of the reasons on which the decision is based.

The appellant submitted that in the present case there has been a manifest error and an abuse of discretion.

In this connexion, it emphasized that monetary compensation at the frontier serves to neutralize the effects of changes in the monetary parities upon exports and imports. A change of exchange rates is a condition precedent but is not a sufficient ground in itself for the introduction of monetary compensation at the frontier. Consequently, monetary compensatory amounts should not be charged automatically in the case of a change of monetary parity.

According to the appellant in the main action, the Commission also failed to take account of the effects of the system of reference prices. That system prevents imports below the intervention price and thus disturbance of the market.

The appellant then emphasized that monetary compensatory amounts were not charged on Community quality wine, because such wine did not come within the organization of the market in wine. Therefore such wine was not regarded as having any effect on the Community market in table wines. Hence quality wine coming from non-member countries cannot have any effect on that market either.

Moreover, in adopting the regulations at issue, the Commission misjudged the

condition of the existence of a threat of disruption and the concept of a threat of disturbance of the market, because there was no German market in table wine.

3. In essence the Commission repeated the arguments set out in its written observations.

4. The Court had asked the Commission the following question:

“How can it be ascertained and proved at what time an issue of the Official Journal was actually available at the sales office in Luxembourg?”

The Commission answered by reference to a statement by the Office for Official Publications in the following terms:

“Precisely with the aim of determining the date of publication of issues of the Official Journal within the meaning of the Declaration of the Councils of 23 January 1967, the Office for Official Publications keeps a register of the dates and times of arrival of each language version. The staff of the Office for Official Publications have instructions to post each part up as soon as it has arrived: sample checks to supervise observance of this provision have never found it wanting.”

According to the Commission, the Office also stated that the information is posted up on a blackboard situated at the entrance to its building, and that it is posted up only when all the language versions are available.

The Commission drew the Court's attention in particular to the fourth indent of the said declaration, which is in the following terms:

“The date of publication of an act shall be deemed to be the date on which the Official Journal in which it is published is actually available in the four languages at the sales office in Luxembourg. The date of publication borne by each issue

of the Official Journal shall correspond to that date.”

The Advocate General delivered his opinion at the hearing on 6 December 1978.

Decision

- 1 By an order of 21 March 1978 which was received at the Court on 26 April 1978 the Bundesfinanzhof pursuant to Article 177 of the EEC Treaty referred to the Court certain questions relating, on the one hand, to the validity of certain regulations concerning monetary compensatory amounts in the wine sector and, on the other hand, to the interpretation of Article 191 of the Treaty as well as to the scope of the regulations at issue with regard to their entry into force.

These questions were raised in the context of proceedings pending between a German undertaking and the competent customs authority for the repayment of monetary compensatory amounts charged when certain quantities of wine imported from Yugoslavia were removed from a private customs warehouse between 9 and 30 March 1973.

Question 1

- 2 The first question raised by the Bundesfinanzhof is worded as follows:

“Are Regulations (EEC) Nos 649/73 of 1 March 1973, 741/73 of 5 March 1973 and 811/73 of 23 March 1973 of the Commission valid even in so far as they each fix in Annex I, No 6, monetary compensatory amounts for imported red and white wines under tariff subheadings 22.05 C I and C II without making any distinction between the two?”

- 3 Annex I, No 6, to Regulation No 649/73 of the Commission of 1 March 1973 fixing the monetary compensatory amounts (Official Journal L 64 of

9 March 1973, p. 7) for the first time extended the system of monetary compensatory amounts to wine of the type in question, and Regulations No 741/73 of the Commission of 5 March 1973 (Official Journal L 71 of 19 March 1973, p. 1) and No 811/73 of the Commission of 23 March 1973 (Official Journal L 79 of 27 March 1973, p. 1) adjusted the amounts to changes in the exchange rates.

The appellant in the main action claimed that, by thus extending the scope of the monetary compensatory amounts, the Commission failed to observe the conditions prescribed in the basic Regulation No 974/71 of the Council, from which it emerges, first, that the power to charge or grant monetary compensatory amounts can be exercised only when changes in the exchange rates of currencies would bring about disturbances in trade in agricultural products.

- 4 In this connexion, it is for the Commission, acting according to the procedure known as the Management Committee procedure, to decide as to the existence of a risk of disturbance.
- 5 As the Court has already stated in several judgments, since the evaluation of a complex economic situation is involved, the Commission and the Management Committee enjoy, in this respect, a wide measure of discretion.

In reviewing the legality of the exercise of such discretion, the Court must examine whether it contains a manifest error or constitutes a misuse of power or whether the authority did not clearly exceed the bounds of its discretion.

- 6 In the course of the procedure, the Commission stated the facts which, in its assessment, justified the measure adopted.

It referred *inter alia* to the scale of the monetary crisis at the beginning of 1973 and to the complexity of the economic factors to be taken into consideration.

In particular, it mentioned the factors which, in its view, gave reason to fear disturbances in the French and German wine markets, as well as the considerations which led it to apply the monetary compensatory amounts system in its entirety to wine coming from non-member countries.

It does not appear that, in this general assessment of the situation and of the kind of measures required, the Commission was guilty of manifest errors or that it otherwise exceeded the general bounds of its discretion under the relevant rules.

- 7 However, the appellant in the main action accuses the Commission of having failed to observe certain more specific conditions resulting from those rules.

In this connexion, the appellant alleges that the charging of such amounts is not justified in cases, such as the present one, where the import contract was concluded before the currency changes in a currency subsequently revalued, so that the goods could not be imported at a reduced price owing to the change in the exchange rates.

- 8 This ground of complaint cannot be upheld, because, as the Court has already held in its judgment of 24 October 1973 (*Case 5/73 Balkan-Import-Export GmbH* [1973] ECR 1091), the practicability of the compensatory amounts system requires general rules which apply to all imports or exports and which do not take account of particular details in contracts such as the currency in which they were concluded or the time at which they were concluded.

- 9 The appellant in the main action also argues that the charging of monetary compensatory amounts on imports of wine from non-member countries is unjustified in cases, such as the present one, where importation is subject to observance of the reference price or to the charging of a levy under Article 9 of Regulation No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (*Official Journal, English Special Edition 1970 (I), p. 234*).

- 10 However, that argument ignores the difference which exists between the functions of the reference price system and those of the monetary compensatory amounts system.

Reference prices, expressed in units of account, are to enable the prices of wine from non-member countries to be brought to the level of prices within the Community, whereas the monetary compensatory amounts system is to

enable, in the case of fluctuating exchange rates, differences recorded in prices expressed in national currency following changes in exchange rates to be made up and in particular to prevent the disturbances in trade which might result therefrom.

- 11 The appellant in the main action argues finally that it is unjustified to apply the monetary compensatory amounts system to quality wine coming from non-member countries.

According to Article 1 (2) of Regulation No 974/71, that system applies only to products covered by intervention arrangements under the common organization of agricultural markets.

It is claimed that that condition is not fulfilled in the present case, since under Regulation No 816/70 the common organization of the market in wine provides intervention measures only for table wine, excluding quality wine.

- 12 However, this line of argument does not take account of the precise meaning of these concepts as it emerges from the Community rules in the wine sector.

In this connexion it is important to note that the two concepts of "table wine" and "quality wines produced in specified regions" referred to in Article 1 (4) (b) and (5) of Regulation No 816/70 apply only to products originating in the Community, whereas the Community rules do not define any special concept of "quality wine" coming from third countries as distinct from the concept of "table wine".

It must be inferred from this that for the purposes of Community rules, in particular those relating to the monetary compensatory amounts system, any wine coming from a non-member country is — in the absence of any exception providing otherwise, an issue not raised in this case — to be treated as table wine.

- 13 Therefore the answer should be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulations No 649/73 of the Commission of 1 March 1973, No 741/73 of 5 March 1973 and No 811/73 of 23 March 1973 in so far as they fixed monetary

compensatory amounts applicable to red and white wine falling within tariff subheading 22.05 C I and C II imported from non-member countries.

Question 2

14 The second question is in the following terms:

“Is a regulation to be regarded as published within the meaning of Article 191 of the Treaty establishing the European Economic Community:

- (a) on the date borne by the Official Journal in question;
- (b) at the time when the Official Journal in question is in fact available at the Office for Official Publications of the European Communities; or
- (c) at the time when the Official Journal in question is actually available in the territory of the particular Member State?”

15 Article 191 of the Treaty provides that regulations shall be published in the Official Journal of the Community. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication.

The Official Journal is published by the Office for Official Publications of the European Communities, situated in Luxembourg, which has received formal instructions from the Council intended to ensure that the date of publication borne by each issue of the Official Journal corresponds to the date on which that issue is in fact available to the public in all the languages at the said Office.

These provisions give rise to a presumption that the date of publication is in fact the date appearing on each issue of the Official Journal.

However, should evidence be produced that the date on which an issue was in fact available does not correspond to the date which appears on that issue, regard must be had to the date of actual publication.

A fundamental principle in the Community legal order requires that a measure adopted by the public authorities shall not be applicable to those concerned before they have the opportunity to make themselves acquainted with it.

- 16 As regards the last alternative in the question submitted, it is important that the date on which a regulation is to be regarded as published should not vary according to the availability of the Official Journal of the Communities in the territory of each Member State.

The unity and uniform application of Community law require that, save as otherwise expressly provided, a regulation should enter into force on the same date in all the Member States, regardless of any delays which may arise in spite of efforts to ensure rapid distribution of the Official Journal throughout the Community.

- 17 Therefore the answer to the question raised should be that Article 191 of the EEC Treaty must be interpreted to mean that, in the absence of evidence to the contrary, a regulation is to be regarded as published throughout the Community on the date borne by the issue of the Official Journal containing the text of that regulation.

Questions 3 and 4

- 18 Questions 3 and 4 are worded as follows:

“Was Regulation (EEC) No 741/73 of the Commission of 5 March 1973 also applicable to wine which was first made subject to monetary compensatory amounts by Regulation (EEC) No 649/73 of the Commission of 1 March 1973 and which was removed from a private customs warehouse before the last-mentioned regulation was in fact published?”

“If Question 3 is answered in the negative: was Regulation (EEC) No 649/73 of the Commission of 1 March 1973 applicable to the said wine?”

- 19 The first paragraph of Article 3 of Regulation No 649/73 of 1 March 1973 provided that that regulation was to enter into force on the day of its publication in the Official Journal; however, that regulation was published in an issue of the Official Journal which, although bearing the date 9 March 1973, was not in fact available at the seat of the Office for Official Publications, according to the statement of the Office itself, until 12 March 1973, upon which date it must be deemed to have entered into force.

According to the second and third paragraphs of Article 3 of the aforesaid regulation, the amounts resulting from its application were however to apply from 26 February 1973, or even — in favour of parties concerned — from 13 February 1973.

Regulation No 741/73 of 5 March 1973 altering the monetary compensatory amounts fixed by Regulation No 649/73 entered into force on the day of its publication in the Official Journal, that is 19 March 1973, but according to Article 2 of the regulation it applied from 5 March 1973.

Thus the questions submitted first raise the issue whether Regulation No 649/73 could validly attribute retroactive effects to itself as from its entry into force, in particular by extending the monetary compensatory amounts system for the first time to the wine in question.

20 Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

As regards monetary compensatory amounts in particular the system introduced by Regulation No 974/71 implies in principle that the measures adopted take effect as from the occurrence of the events which give rise to them, so that in order to make them fully effective it may be necessary to provide for the applicability of newly-fixed monetary compensatory amounts to facts and events which occurred shortly before the publication of the regulation fixing them in the Official Journal.

It is inherent in the system of monetary compensatory amounts that traders must expect any appreciable change in the monetary situation possibly to entail the extension of the system to new categories of goods and the fixing of new amounts.

In this case, on the date laid down for the applicability of the new amounts, the Commission adopted special measures for them to be brought to the attention of the various sectors of industry concerned.

The applicability of Regulation No 649/73 to events occurring as from 26 February 1973, that is to say during a period of two weeks before its actual

publication, was therefore not such as to jeopardize expectations deserving protection.

In the light of this finding in relation to Regulation No 649/73, and having regard to the extraordinary situation prevailing at the time, no overriding consideration pertaining to legal certainty prevents Regulation No 741/73, adopted on 5 March 1973, from altering the monetary compensatory amounts resulting from the aforementioned regulation from being given effect as from 5 March 1973, notwithstanding the fact that Regulation No 649/73 had not yet been published in the Official Journal.

- 21 Therefore the answer should be that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulations No 649/73 of 1 March 1973 and No 741/73 of 5 March 1973 in so far as they were made applicable from 26 February 1973 and 5 March 1973 respectively.

Costs

- 22 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Bundesfinanzhof by an order of 21 March 1978, hereby rules:

1. Consideration of the questions raised has disclosed no factor of such a kind as to affect either the validity of Regulations No 649/73 of 1 March 1973, No 741/73 of 5 March 1973 and No 811/73 of 23 March 1973 in so far as they fixed monetary compensatory amounts applicable to red and white wine falling within tariff subheadings 22.05 C I and C II imported from non-member countries or the

validity of Regulations No 649/73 and No 741/73 in so far as they were made applicable from 26 February 1973 and 5 March 1973 respectively.

2. Article 191 of the EEC Treaty must be interpreted to mean that, in the absence of evidence to the contrary, a regulation is to be regarded as published throughout the Community on the date borne by the issue of the Official Journal containing the text of that regulation.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore
Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 25 January 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL
DELIVERED ON 6 DECEMBER 1978 ¹

*Mr President,
Members of the Court,*

The two references for a preliminary ruling on both of which I am today giving a single opinion, because the problems they raise are very much the same, are concerned with the levying of monetary compensatory amounts on wine, in particular with the retroactive inclusion of certain types of wine in the monetary compensation system.

Until the beginning of 1973 the system of monetary compensatory amounts was

keyed to the movements of Member States' currencies against the US dollar. It was confined to monetary compensatory amounts being levied on imports and granted on exports in those countries where a revaluation had been effected.

At the beginning of 1973 there was another international currency crisis. The dollar came under so much pressure that on 12 February 1973 the American Government announced a 10% devaluation. The Italian authorities also suspended intervention as the lira

¹ — Translated from the German.