

only if the contract or declaration of distillation specifies, with regard to the constituent wines, the quantity, the actual alcoholic strength by volume, and

the type of wine. If that is not done, so that aid must be refused, it will also not be possible to grant aid in respect of wine of Type A I under that regulation.

REPORT FOR THE HEARING delivered in Case C-158/89 *

I — Facts and procedure

1. Article 11 of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal L 54, p. 1) provides for preventive distillation of table wine in return for a payment of aid.

2. Article 4(1) of Council Regulation (EEC) No 2179/83 of 25 July 1983 laying down general rules for distillation operations involving wine and the by-products of wine-making (Official Journal L 212, p. 1) provides that any producer intending to deliver wine of his own production for distillation is to conclude a delivery contract with a distiller and submit it to the competent intervention agency for approval.

According to Article 5(1), producers referred to in Article 4(1) who themselves possess distillation plants and who intend to carry out one of the distillation operations referred to or who intend to have their wine distilled on their behalf in the plant of an approved distiller working under contract

are to submit for approval to the competent intervention agency a declaration of delivery for distillation.

Articles 4(2) and 5(2) require that the contract or declaration is to specify at least the quantity, the colour and the actual alcoholic strength by volume of the wine.

Article 7(3) of the regulation provides that the intervention agency is to pay the distiller or the producer the aid specified for the distillation operations in question upon submission of proof that the total quantity of wine mentioned in the contract or declaration has been distilled.

3. Article 2(2) of Commission Regulation (EEC) No 2373/83 of 22 August 1983 laying down, for the 1983/84 wine-growing year, detailed implementing rules concerning the distillation provided for in Article 11 of Regulation No 337/79 (Official Journal L 232, p. 5) provides that the contracts and declarations are to specify at least the quantity, colour and actual alcoholic strength by volume of the wine to be distilled, stating whether it is table wine or wine suitable for yielding table wine.

* Language of the case: German.

According to Article 5 of the regulation, the amount of the aid is calculated on the basis of the actual alcoholic strength by volume of the product of the distillation and the type of wine distilled.

4. Article 2 of Council Regulation (EEC) No 340/79 of 5 February 1979 determining the types of table wines (Official Journal L 54, p. 60) distinguishes, in regard to types of white table wine, between wine from vine varieties of the Riesling type, known as 'Type A IIP', wine from vine varieties of the Sylvaner or Müller-Thurgau type, known as 'Type A II', and white wine other than that referred to above with an actual alcoholic strength by volume of not less than 10% vol and not more than 12% vol, known as 'Type A I'.

According to Article 3 of that regulation, the list of vine varieties corresponding to wines of Types A II and A III is to be adopted by regulation under the management committee procedure.

5. In the absence of a Community regulation of that nature, the Federal Republic of Germany, in the Bekanntmachung über die Zuordnung der Rebsorten zu den Tafelweinarten (Notice concerning the relationship of vine varieties to types of table wine) of 15 March 1979 (*Bundesanzeiger* No 56, of 21.3.1979), classified German table wines from vine varieties of the Auxerrois, Weißer Burgunder, Weißer Riesling and Ruländer types in Type A III and all other German white table wines in Type A II.

The Bundesamt für Ernährung und Forstwirtschaft ('the German intervention agency') requires details concerning the type

of wine offered for distillation to be entered on the declaration of distillation.

6. The Weinverordnung (Wine Regulation), in the version which appeared in the notice of 4 August 1983 (*Bundesgesetzblatt* I, p. 1078), permits, by way of derogation from Council Regulation (EEC) No 355/79 of 5 February 1979 laying down general rules for the description and presentation of wines and grape must (Official Journal L 54, p. 99), the marketing of wine of domestic origin on which only one vine variety is indicated if at least 85% of the wine is from that vine variety. The composition of the remaining 15% does not have to be indicated.

7. On 14 January 1984, Weingut Dietz-Matti submitted to the German intervention agency a declaration of delivery for distillation of table wine by an approved distillery in respect of 178 hectolitres of table wine of Type A III (Riesling). By notice of 15 August 1984, the intervention agency granted aid in the amount of DM 24 379.65.

8. After discovering during an inspection that the wine distilled contained a total of 18.35% Kerner and 1.76% Gewürztraminer, and since it considered that the abovementioned wines fell under Type A II without the proportions used in the blend being indicated in the declaration, the intervention agency, by notice of 3 October 1985, revoked the notice granting aid and demanded repayment. By a decision of 5 June 1986, an objection was dismissed on the grounds that the wine declared was not identical to the wine distilled and that since the proportion of wine added was about 20%, the limit laid down in the national rules, which is in the order of 15%, had not even been complied with, whereupon Weingut Dietz-Matti brought

an action before the Verwaltungsgericht Frankfurt am Main.

If not:

- (c) As a fall-back provision, can aid be granted in such circumstances as for wine of Type A I?

9. Since it considered that the dispute involved an interpretation of the relevant Community rules, the Verwaltungsgericht Frankfurt am Main, by an order of 30 March 1989, stayed the proceedings until the Court of Justice has given a preliminary ruling under Article 177 of the EEC Treaty on the following questions:

10. The order made by the Verwaltungsgericht Frankfurt am Main was received at the Court of Justice on 3 May 1989.

'(1) Under Article 2(2) of Regulation (EEC) No 2373/83, is specification of the correct type of wine in the distillation declaration a pre-condition for entitlement to aid?

11. In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were submitted, on 27 July 1989, by the Commission of the European Communities, represented by Klaus-Dieter Borchardt, a member of its Legal Department, assisted by Michel Vilaras, a judge of the Greek Council of State seconded to the Commission's Legal Department in the context of an exchange programme, and, on 3 August 1989, by the Bundesamt für Ernährung und Forstwirtschaft, represented by Ursula Holzhauser, Rechtsreferentin.

(2) Can vine varieties other than those mentioned in Article 2 of Regulation (EEC) No 340/79 be classified under Type A II or Type A III wine? According to what criteria must that classification be made?

12. 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.

(3) (a) Can a blend which under German designation rules may be marketed with the mention of only one vine variety be classified under the type of wine which corresponds to that vine variety?

13. By a decision of 6 December 1989 adopted under Article 95(1) and (2) of the Rules of Procedure, the Court assigned the case to the Second Chamber.

If not:

II — Written observations submitted to the Court

(b) In the case of another mixture of wines of Types A II and A III before distillation, can aid be granted in accordance with the proportions of the types of wine?

1. The intervention agency, representing the defendant in the main proceedings, points out that the matters set out in Article 2(2) of Regulation No 2373/83, cited above,

namely the quantity, colour and actual alcoholic strength by volume of the wine and whether it is table wine or suitable for yielding table wine, merely constitute the minimum which must be specified and further information may be added. It follows from Article 7 of Regulation No 2179/83, cited above, that, in order to attract aid, the wine mentioned in the contract and the wine actually delivered must be identical. That cannot be determined solely on the basis of the information mentioned in Article 2(2) of Regulation No 2373/83, cited above. It is also necessary to specify the type of table wine so that the intervention agencies and the Commission can manage the distillation programme in the context of the common organization of the market in wine, and in particular, fix the minimum buying-in price and the level of aid. Furthermore, the implementing provisions concerning preventive distillation for the marketing year at issue, namely 1983/84, also speak of specifying the type of table wine.

The reply to the first question should therefore be as follows:

‘Specification of the correct type of wine in the distillation declaration referred to in Article 2(2) of Regulation No 2373/83 is a pre-condition for entitlement to aid’.

The classification of vine varieties in relation to the various types of wine, provided for in Article 3 of Regulation No 340/79, cited above, has not yet been carried out. In order to fill that gap in Community law, to make sure that the prices fixed in the framework of the common organization of the market also apply to table wines from vine varieties other than those already mentioned in Article 2 of Regulation No 340/79, cited

above, and to make it possible for aid to be obtained for such vine varieties, the Federal Republic of Germany was obliged to carry out a complete classification of German vine varieties other than those mentioned in Article 2 under Types A II and A III.

The reply to the second question should therefore be as follows:

‘Vine varieties other than those mentioned in Article 2 of Regulation No 340/79 should also be classified under Types A II and A III’.

With regard to the 1983/84 wine-growing year, the Commission agreed, by way of exception, to pay aid even where, by mistake, the extent to which the wine had been blended had not been specified, if the beneficiaries had complied with the German rules on designations, that is to say, if 85% of the wine used in the blend was from the vine variety specified. However, the conditions for entitlement to aid have not been fulfilled in this case. The situation would be different in regard to blends composed of table wines from different vine varieties but classified under the same type of wine since in such cases, the minimum buying-in price and the amount of the aid under Regulation No 2373/83, cited above, remains the same.

The reply to Question 3(a) should therefore be as follows:

‘A blend which under German designation rules may be marketed with the mention of only one vine variety may be classified under the type of wine which corresponds to that vine variety only if the other vine varieties used in the blend are themselves table wine of the type in question’.

In regard to blends using wine of Types A II and A III, in which neither of those types represents at least 85% of the total, no aid may be paid. Furthermore, no aid may be paid in respect of the individual component parts of the blend, since the wine delivered is not identical to that mentioned in the contract or declaration. It follows from the Community rules that, in order to prevent abuse, the wine delivered must be identical to the wine accepted for distillation if there is to be entitlement to aid under the Community scheme.

vine variety whereas in regard to wines from other areas of production, only the alcoholic strength of the wine is decisive. The guide price for wine of Type A I is calculated on the basis of the alcoholic strength whereas, in regard to wines of Types A II and A III, it is calculated on the basis of the vine variety. To grant aid on the basis that the wine was of Type A I would mean that the price of a table wine the quality of which is determined exclusively by the vine variety would depend on the alcoholic strength of the wine.

The reply to Question 3(b) should therefore be as follows:

The reply to Question 3(c) should therefore be in the negative.

'If a mixture of several wines is to attract aid, the contract or declaration must specify the quantity and alcoholic strength of each type of wine used in the mixture. In such cases, the amount of the aid is to be calculated in the light of the quantities composing the mixture. If each type of wine is not separately specified, it will not be possible to establish that the wine delivered is identical to the wine accepted'.

Since specification of the correct type of wine is a pre-condition for entitlement to aid, no payment may be made in respect of wine of Type A I. Furthermore, the payment of aid in a reduced amount would encourage producers to supply incorrect information, since they would always be certain of obtaining at least a part of the aid. According to the Bekanntmachung über die Zuordnung der Rebsorten zu den Tafelweinarten, there are no German table wines in Type A I because the quality and characteristics of wines produced in the Federal Republic of Germany are determined by the

2. The Commission points out that aid may be granted only if the producer submits the delivery contract concluded with the distillery and a delivery declaration to the competent intervention agency for approval and provides proof that the total quantity of wine appearing in the contract or declaration has actually been distilled. It is true that Article 2(2) of Regulation No 2373/83, cited above, does not expressly require that the type of wine delivered for distillation should be indicated. However, the fact that the type of wine is used to determine the amount of the aid (Article 5 of Regulation No 2373/83, cited above) and thus determines the scope of the rights involved does not prevent that information also being subject to the approval procedure and thereby being a pre-condition for entitlement to aid. The intervention agency cannot carry out the necessary checks if it does not have all the information needed to identify the wines, among which are the items set out in Article 2(2) of Regulation No 2373/83, cited above, and also the type of wine, which is essential in fixing the amount of the aid. The failure to indicate

the type of wine in Article 2(2) of Regulation No 2373/83, cited above, may be explained by the fact that the Community legislature considered that, having regard to the importance of the type of wine in fixing the amount of the aid, the intervention agency would clearly require it to be specified.

The Commission therefore proposes that the reply to the first question should be as follows:

‘Specification of the correct type of wine in the distillation declaration referred to in Article 2(2) of Regulation No 2373/83 is a pre-condition for entitlement to aid’.

The purpose of Regulation No 340/79, cited above, is to determine the types of table wine. In the Federal Republic of Germany, a distinction is drawn between ‘Weinarten’ (types of wine) and ‘Weinsorten’ (sorts of wine), the word ‘Art’ being a generic term which can apply to several different vine varieties. It cannot therefore be excluded that vine varieties other than those referred to in Article 2(b) and (c) of that regulation might fall under Types A II or A III. In that regard, moreover, Article 3 of the regulation provides that lists of the vine varieties covered by Types A II and A III are to be adopted. That measure, which gives powers exclusively to the Community, does not necessarily imply that the classification of vine varieties carried out by the Office is incompatible with Community law. The Court has held that national bodies may be entitled, where powers reserved to the Communities are not exercised, to adopt measures themselves in the field concerned, as long as the adoption of such measures constitutes the fulfilment

of the duty to cooperate imposed on the Member States by Article 5 of the Treaty, and the measures are compatible with the principles of the common organization of the markets and are only temporary and provisional in nature (see the judgments of 5 May 1981 in Case 804/79 *Commission v United Kingdom* [1981] ECR 1045 and of 28 March 1984 in Joined Cases 47/83 and 48/83 *Van Miert* [1984] ECR 1721).

The classification notice adopted by the intervention agency may be regarded as a measure interpreting the general conditions laid down by Community law, which will cease to be valid once a Community measure is adopted and which lays down criteria for classification which have not been criticized.

Under those circumstances, the reply to the second question should be as follows:

‘The classification under Types A II or A III of vine varieties other than those mentioned in Article 2 of Regulation No 340/79 is theoretically possible. As long as that classification has not been carried out by the adoption of the Community list provided for in Article 3 of Regulation No 340/79, corresponding classifications adopted at national level may be used in interpreting Community law, as long as they are in conformity with the purpose of the rules to be adopted by the Community’.

The problem of classifying blends of wine is not resolved by recourse to the rules on designations, since the law on that subject and the provisions concerning distillation are intended to achieve different objectives.

The aid granted in respect of a blend composed of different types of wine should be paid having regard to the proportion of each type present, at the appropriate rate for that type. However, such a calculation is impossible if the existence of the blend is revealed only when a check is carried out. In such a case, the producer will have failed to fulfil his obligation to specify the correct type of wine in the contract or declaration and does not fulfil the conditions for entitlement to aid. Since the payment of aid is subject to correct information being supplied, it would also be impossible in such a case to pay aid in a reduced amount. Such a situation would be an inducement to producers to make incorrect declarations and could not be justified to producers who fulfilled the conditions for entitlement to aid. The fact that systematic checks would be impossible would create a risk that certain producers would unjustifiably receive aid. The refusal to grant aid cannot be made dependant on deliberate fault, the existence of which cannot be verified.

Similarly, aid at the rate fixed for Type A I could not be paid to producers who had made an incorrect declaration. Since aid is always conditional upon access to the preventive distillation scheme, exclusion from that scheme for having provided incorrect information necessarily leads to aid being refused.

Under those circumstances, the Commission proposes that the reply to the third question should be as follows:

- (a) Rules on designations which permit the marketing of blends of wine under the name of only one vine variety cannot be invoked in order to classify blends under a particular type of wine.
- (b) The amount of aid to be paid in respect of a blend of wines of Types A II and A III is to be calculated in proportion to the types of wine in the total quantity distilled if the proportions in the blend have been correctly specified in the delivery contracts and/or distillation declarations.
- (c) Where the type of wine is incorrectly specified, no aid may be paid at the rate provided for in respect of wines of Type A I'.

F. A. Schockweiler
Judge-Rapporteur