

JUDGMENT OF THE COURT (First Chamber)  
1 April 1993 \*

In Joined Cases C-31/91 to C-44/91,

FOURTEEN REFERENCES to the Court under Article 177 of the EEC Treaty by the Corte Suprema di Cassazione for a preliminary ruling in proceedings pending before that court between

**Alois Lageder SpA**

**Divit Srl (formerly Vinexport SpA)**

**Ditta Josef Nidermayr**

**Schenk SpA**

**Ditta Josef Brigl**

**W. Walch Srl**

**Castello Rametz SpA**

**Cooperative Cavit Srl**

**Cantina Vini J. Hofstätter Sas**

**Ditta Alton Lindner**

**H. Mumelter e C. Snc**

**Girelli SpA**

**Josef Stimpfl Snc**

**Azienda Vinicola Liberio Todesca**

and

**Amministrazione delle Finanze dello Stato,**

\* Language of the case: Italian.

on the interpretation of Article 1 of Regulation (EEC) No 1311/73 of the Commission of 16 May 1973 relating to a provisional list of quality wines produced in specified regions as well as the identification of these wines in the accompanying document (OJ 1973 L 132, p. 20),

THE COURT (First Chamber),

composed of: G. C. Rodríguez Iglesias, President of the Chamber, R. Joliet and D. A. O. Edward, Judges,

Advocate General: M. Darmon,  
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- SpA Alois Lageder, Srl Divit, Ditta Josef Nidermayr, SpA Schenk, Ditta Josef Brigl, Srl W. Walch, SpA Castello Rametz, Srl Cooperative Cavit, Cantina Vini J. Hofstätter Sas, Ditta Alton Lindner, Snc H. Mumelter e C., SpA Girelli, Snc Josef Stimpfl and Azienda Vinicola Liberio Todesca by S. Giammarco, of the Trento Bar, and G. Cavasola, of the Rome Bar,
- the Italian Government by Professor L. Ferrari Bravo, Head of Contentious Diplomatic Affairs at the Ministry of Foreign Affairs, and I. M. Braguglia, Avvocato dello Stato, acting as Agents,
- the Commission of the European Communities by its Legal Adviser, E. De March, acting as Agent, assisted by G. Marchesini, lawyer at the Corte Suprema di Cassazione,

having regard to the Report for the Hearing,

after hearing the oral observations of the Italian Government and the Commission at the hearing on 4 June 1992,

after hearing the Opinion of the Advocate General at the sitting on 15 September 1992,

gives the following

### Judgment

- 1 By orders of 26 February 1990 received at the Court on 28 January 1991 the Corte Suprema di Cassazione (Supreme Court of Cassation) referred three identical questions to the Court under Article 177 of the EEC Treaty for a preliminary ruling in 14 cases pending before that court on the interpretation of Regulation (EEC) No 1311/73 of the Commission of 16 May 1973 relating to a provisional list of quality wines produced in specified regions as well as the identification of these wines in the accompanying document (OJ 1973 L 132, p. 20).
  
- 2 Those questions were raised in proceedings between the companies Alois Lageder, Divit (formerly Vinexport SpA), Ditta Josef Nidermayr, Schenk, Ditta Josef Brigl, W. Walch, Castello Rametz, Cooperative Cavit, Cantina Vini J. Hofstätter, Ditta Alton Lindner, H. Mumelter e C., Girelli, Josef Stimpfl and Azienda Vinicola Liberio Todesca (hereinafter 'the applicants in the main proceedings') and the Amministrazione delle Finanze dello Stato (hereinafter 'the Amministrazione') concerning the post-clearance recovery of monetary compensatory amounts (hereinafter 'MCAs') on wines of Italian production exported by them to Germany between June and August 1973.
  
- 3 It is apparent from the documents before the Court that, when they were exported, the wines in question were accompanied by VA(2) forms issued by the Istituto Agrario Provinciale di S. Michele (Provincial Agricultural Institute of San Michele, 'the Istituto'), certifying that they were quality wines p.s.r. (quality wines produced in specified regions). Accordingly, the applicants in the main proceedings did not pay any MCAs.

- 4 In 1977, however, the Amministrazione found that the exported wines could not be designated as quality wines p.s.r. under Article 1 of Regulation No 1311/73, cited above, because they were not recognized under Italian legislation as wines deserving the designation 'Denominazione di origine controllata' ('DOC') or 'Denominazione di origine controllata e garantita' ('DOCG'). Accordingly, since only quality wines p.s.r. are exempt from MCAs, the Amministrazione demanded post-clearance payment of those amounts.
  
- 5 For that purpose, it issued recovery notices in 1977, claiming that, in pursuance of Regulation No 1311/73, the Istituto was not authorized to issue accompanying VA(2) forms after 22 May 1973 and that the provisional list of quality wines p.s.r. on which it had relied was no longer valid after that date.
  
- 6 The recovery notices served in 1978 were challenged by the applicants in the main proceedings before the Tribunale di Trento (District Court, Trento). They claimed that the Amministrazione's interpretation of Regulation No 1311/73 was incorrect and that, in accordance with the principles of prescription and of the protection of legitimate expectations, the Amministrazione had neither a right nor an interest in the collection of the MCAs so many years after completion of the export transaction. The Tribunale di Trento annulled the recovery notices. Upon appeal by the Amministrazione, that judgment was set aside by the Corte d'Appello di Trento (Court of Appeal, Trento), which took the view that the MCAs were payable. The applicants in the main proceedings then appealed in cassation to the Corte Suprema di Cassazione.
  
- 7 In order to resolve the dispute that court referred the following questions to the Court for a preliminary ruling:
  - '(1) Must Article 1 of Regulation (EEC) No 1311/73 of the Commission of 16 May 1973 be understood as meaning that only Italian wines which had already obtained, by presidential decree, the DOC designation, could be regarded in the Community as quality wines, since from 1 April 1973 or (at the latest) 22 May 1973 only such wines were entitled to inclusion on the list specified in Article 1, third paragraph, of Regulation (EEC) No 817/70?

In the alternative, must the expression “included the wines” in Article 1 of Regulation (EEC) No 1311/73 be interpreted as meaning that (until 31 August 1973 at least, that is to say until the entry into force of Regulation No 2257/73 of 16 August 1973) the provisional list adopted in 1970 pursuant to Regulation No 1704/70 of 25 August 1970 remained in force, having regard to the fact that Regulation (EEC) No 1627/71 of the Council of 26 July 1971 provided that until Member States had adopted the national provisions on conditions of production, “and until 31 August at the latest”, wines appearing on a list adopted according to the procedure provided for in Article 7 of Regulation No 24 were to be considered as quality wines p.s.r. if they were in conformity with the other provisions of the regulation?

In other words, did Regulation No 1311/73 constitute an advance application, at least with effect from 22 May 1973, of the definitive scheme, or did it retain the provisional scheme in so far as it merely supplemented the 1970 list by reference to the wines which had obtained (or would obtain in the future) national recognition as wine with the DOC designation?

- (2) Having regard to the fact that the purpose of applying monetary compensatory amounts is to counteract possible disturbances in agricultural markets as a result of the monetary measures of the Member States, do the financial authorities of a Member State have a right to and an interest in the collection of monetary compensatory amounts (which constitute own resources of the Community) some years after the export transactions took place, when such amounts, originally due, were not recovered on account of an error by the authorities in question concerning the interpretation of the Community regulations and/or of the documents produced by the exporter?
  
- (3) Does the recovery, several years after completion of the transaction, of compensatory amounts which were due but not collected for the reasons mentioned in Question 2 infringe the Community principle that the body which issued the accompanying document may be expected to have conducted its operations correctly and that the interpretation more favourable to the exporter given by the finance authorities at the time of the export transaction may be relied on, where the trader acted in good faith and considers that he can no longer recover the sums from the foreign importer?’

- 8 Reference is made to the Report for the Hearing for a fuller account of the applicable Community legislation, the facts of the main proceedings, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

### The first question

- 9 The first question essentially seeks to ascertain whether, at the material time, only Italian wines designated DOC or DOCG were entitled to benefit from the arrangements for quality wines p.s.r.
- 10 It should be observed that Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine (OJ, English Special Edition 1970 (I), p. 234) applies to all wines, whereas Regulation (EEC) No 817/70 of the Council of 28 April 1970 laying down special provisions relating to quality wines produced in specified regions (OJ, English Special Edition 1971 (I), p. 252) introduced special arrangements for quality wines p.s.r. Both regulations entered into force on 1 June 1970.
- 11 Regulation No 817/70 provided for a scheme for the identification of wines eligible for designation as quality wines p.s.r. (Article 12(1)), made it compulsory for the expression 'quality wine p.s.r.' to appear on the accompanying documents (third subparagraph of Article 12(4)) and required a provisional list to be drawn up pending the harmonization of national rules with a view to the establishment of a definitive list by not later than 31 August 1973 (Article 17 and the third paragraph of Article 1 as added to Regulation No 817/70 by Regulation (EEC) No 1627/71 of 26 July 1971 amending Regulations Nos 816/70 and 817/70 as regards certain transitional measures on wine (OJ, English Special Edition 1971 (II), p. 604)).
- 12 The final amendment to the provisional arrangements for the list of quality wines p.s.r., provided for in the third paragraph of Article 1 of Regulation No 817/70, entered into force on 22 May 1973, in pursuance of Regulation No 1311/73, cited

above. Article 1 of Regulation No 1311/73 provides that the provisional list of quality wines p.s.r. includes only the wines 'which, according to the legislation of the producer Member State, have right to the expressions specified for each of these Member States in Article 12(2) of Regulation (EEC) No 817/70'.

- 13 Article 12(2)(c) of Regulation No 817/70 mentions only wines of Italian production designated DOC and DOCG.
  
- 14 Regulation No 1311/73 was repealed by Article 4 of Regulation (EEC) No 2247/73 of the Commission of 16 August 1973 on the control of quality wines produced in specified regions (OJ 1973 L 230, p. 12), and the definitive arrangements for quality wines p.s.r. as provided for in Regulation No 817/70 entered into force on 1 September 1973 (Article 5).
  
- 15 It follows that during the period from 22 May 1973 to 31 August 1973, the material time in the main proceedings, only Italian DOC and DOCG wines were entitled to be designated quality wines p.s.r. under the provisions of Regulation No 1311/73.
  
- 16 The applicants in the main proceedings have claimed, however, that the fact that their wines had not received DOC or DOCG designations did not preclude them from benefiting from the arrangements for quality wines p.s.r. In that connection, they argue that the provisional list of quality wines established in Annex III B to Regulation (EEC) No 1704/70 of the Commission of 25 August 1970 amending Regulation (EEC) No 1022/70 introducing accompanying certificates for certain wines for a transitional period (*Journal Officiel* 1970 L 190, p. 15), on which their wines appeared, remained in force until 31 August 1973, the date of entry into force of the definitive arrangements for quality wines p.s.r. Moreover, the Istituto was still authorized to issue accompanying VA(2) forms, since it was specifically mentioned in that connection on the list established in Annex III C to that regulation.

- 17 It is not in dispute that the provisional arrangements for quality wines p.s.r. underwent a number of amendments between 1971 and 1973 and that the provisional list of quality wines p.s.r. mentioned in the third paragraph of Article 1 of Regulation No 817/70 was, in theory, valid until 31 August 1973. However, from the entry into force of Regulation No 1311/73, that is to say, from 22 May 1973, the essential condition that Italian wines had to fulfil in order to be recognized as quality wines p.s.r. was to have received the DOC or DOCG designation from the Italian State. Thenceforth the other provisional lists were no longer applicable.
- 18 As regards the accompanying documents, it is true that the period of validity of Regulation No 1022/70, supplemented by Regulation No 1704/70, was extended several times. None the less, it is clear from the provisions of Regulation (EEC) No 734/73 of the Commission of 7 March 1973 amending Regulation No 1022/70 following the creation of a system of accompanying documents for wine (OJ 1973 L 69, p. 31), which extended Regulation No 1022/70 for the last time, that the provisions of that regulation were applicable only until 31 March 1973.
- 19 According to Article 2 of Regulation No 1311/73, Regulation (EEC) No 1769/72 of the Commission of 26 July 1972 drawing up accompanying documents and determining the obligations of wine producers and traders other than retailers (OJ, English Special Edition 1972 (III), p. 909), as amended by Regulation (EEC) No 2814/72 of the Commission of 22 December 1972 (OJ, English Special Edition 1972 (30-31 December), p. 3), which established the definitive arrangements for accompanying VA(2) forms with effect from 1 April 1973, was applicable at the material time.
- 20 It follows from the foregoing considerations that the arguments of the applicants in the main proceedings cannot be accepted.
- 21 Accordingly, the answer to the first question referred by the Corte Suprema di Cassazione must be that Article 1 of Regulation No 1311/73 must be interpreted as meaning that only wines bearing the designation 'denominazione di origine controllata' (DOC) and the designation 'denominazione di origine controllata e garantita' (DOCG) were entitled in Italy, during the period of validity of that provision, namely between 22 May and 31 August 1973, to be classified as 'quality wines produced in specified regions'.



## The second question

- 22 By this question the national court seeks to ascertain whether the persons concerned may rely on the prescription of the Amministrazione's right to demand post-clearance recovery of MCAs not collected on export owing to its original misinterpretation of the Community rules.
- 23 The applicants in the main proceedings claim that to demand payment of the MCAs several years after completion of a transaction is contrary to the purpose of the system of monetary compensatory amounts, which is intended to neutralize possible disturbances on the agricultural markets as a result of monetary measures adopted by the Member States.
- 24 That argument cannot be accepted.
- 25 As the Italian Government and the Commission have pointed out, prescription is applicable only if it is expressly provided for. The only provisions which might be of relevance in that respect are contained in Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (OJ 1979 L 197, p. 1).
- 26 However, that regulation was not in force at the material time and is therefore not applicable (see judgment in Joined Cases 212/80 to 217/80 *Amministrazione delle Finanze dello Stato v Salumi and Others* [1981] ECR 2735, paragraph 15).
- 27 It follows that, as the Court recognized in paragraph 18 of the judgment in *Salumi*, where there are no relevant provisions of Community law, it is for the national legal system of each Member State to lay down the detailed rules and conditions for the collection of Community financial charges in general and agricultural levies

in particular and to determine the authorities responsible for collection and the courts with jurisdiction to decide disputes to which that collection may give rise but such procedures and conditions may not make the system for collecting Community charges and dues less effective than that for collecting national charges and dues of the same kind.

28 Furthermore, as the Court stated in paragraph 20 of the same judgment, the national legislation must be applied in a non-discriminatory manner having regard to the procedural rules relating to disputes of the same type, but purely national, and in so far as procedural rules cannot have the result of making impossible in practice the exercise of rights conferred by Community law.

29 The answer to the second question referred by the Corte Suprema di Cassazione must therefore be that in the absence of applicable Community provisions at the time of the events which gave rise to the main proceedings, it is for the national court to apply the provisions of national law on the prescription of export duties wrongly not collected from the person liable owing to a mistake by the national authorities, provided that those provisions apply without discrimination to national claims and Community claims and do not affect the scope or effectiveness of Community law.

### **The third question**

30 By this question the national court seeks essentially to ascertain whether the national authority which issued the accompanying VA(2) forms owing to its misinterpretation of the Community regulations and which, consequently, did not demand payment of the MCAs payable, is bound to observe the principle of the protection of legitimate expectations and whether, consequently, the application of that principle prevents it in a case such as that in the main proceedings from recovering the MCAs four years after completion of the export transaction.

- 1 The applicants in the main proceedings claim that they had a legitimate expectation in the correctness of the operations carried out by the Istituto and in the interpretation, more favourable to the exporter, initially given by the authorities and that, accordingly, they were exempt from the obligation to pay the MCAs.
- 32 It should be pointed out in the first place that, according to Article 2 of Regulation No 1311/73 (see paragraph 19, above), Regulation No 1769/72 establishing the definitive system of accompanying VA(2) forms was applicable at the material time. In pursuance of Article 4 of Regulation No 1769/72 the Commission published on 17 May and 26 June 1973 the list of competent organizations for the accompanying documents in the wine sector (OJ 1973 C 31, p. 20 and C 50, p. 2). It follows from that list that only the 'Ministero Agricoltura e Foreste, Servizio Repressione Frodi — Roma' was competent in that respect for Italy.
- 33 The principle of the protection of legitimate expectations forms part of the Community legal order (see judgment in Case 112/77 *Töpfer v Commission* [1978] ECR 1019). The general principles of Community law are binding on all authorities entrusted with the implementation of Community provisions (see judgment in Case 230/78 *Eridania v Minister for Agriculture and Forestry* [1979] ECR 2739). Consequently, the national authority entrusted with the implementation of the provisional arrangements for accompanying certificates for wines awarded the designation 'quality wines p.s.r.' is required to observe the principle of the protection of the legitimate expectations of traders.
- 34 However, the Court has held that a practice of a Member State which does not conform to Community rules may never give rise to a legitimate expectation on the part of a trader who has benefited from the situation thus created (see judgment in Case 5/82 *Hauptzollamt Krefeld v Maizena* [1982] ECR 4601, paragraph 22).
- 35 It follows that the principle of the protection of legitimate expectations cannot be relied upon against an unambiguous provision of Community law; nor can the conduct of a national authority responsible for applying Community law, which

acts in breach of that law, give rise to a legitimate expectation on the part of a trader of beneficial treatment contrary to Community law (see judgment in Case 316/86 *Hauptzollamt Hamburg-Jonas v Krücken* [1988] ECR 2213, paragraph 24).

36 It follows that the fact that a national authority issues accompanying VA(2) forms for Italian wines which are not recognized as DOC or DOCG wines, whereas under Article 1 of Regulation No 1311/73 and Article 4 of Regulation No 1769/72 a different national authority had sole power to issue those documents cannot give rise, on the part of the exporter, to a legitimate expectation of exemption from the obligation to pay MCAs.

37 Consequently, the arguments of the applicants in the main proceedings cannot be upheld.

38 The answer to the third question referred by the Corte Suprema di Cassazione must therefore be that the national authority responsible for issuing the accompanying VA(2) forms for wines designated 'quality wines p.s.r.' in the common organization of the wine sector is bound to observe the principle of the protection of legitimate expectations. Nevertheless, where an accompanying VA(2) form was issued by a national authority which was not empowered to do so and which, owing to a mistaken interpretation of the applicable Community rules, did not demand payment of the monetary compensatory amounts provided for by those rules, no legitimate expectations can arise on the part of the parties concerned, notwithstanding their good faith.

### Costs

39 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 (First Chamber),

in answer to the questions referred to it by the Corte Suprema di Cassazione by orders of 26 February 1990, hereby rules:

1. Article 1 of Regulation (EEC) No 1311/73 of the Commission of 16 May 1973 relating to a provisional list of quality wines produced in specified regions as well as the identification of these wines in the accompanying document must be interpreted as meaning that only wines designated 'denominazione di origine controllata' (DOC) and 'denominazione di origine controllata e garantita' (DOCG) were entitled in Italy, during the currency of that provision, namely between 22 May and 31 August 1973, to be classified as 'quality wines produced in specified regions'.
2. In the absence of applicable Community provisions at the time of the events which gave rise to the main proceedings, it is for the national court to apply the provisions of national law on the prescription of export duties wrongly not collected from the person liable owing to a mistake by the national authorities, provided that those provisions apply without discrimination to national claims and Community claims and do not affect the scope or effectiveness of Community law.
3. The national authority responsible for issuing the accompanying VA(2) forms for wines awarded the designation 'quality wines p.s.r.' in the common organization of the wine sector is bound to observe the principle of the protection of legitimate expectations. Nevertheless, where an accompanying VA(2) form was issued by a national authority which was not empowered to do so and which, owing to a mistaken interpretation of the applicable Community rules, did not demand payment of the monetary compensatory amounts provided for under those rules, no legitimate expectations can arise on the part of the parties concerned, notwithstanding their good faith.

Rodríguez Iglesias

Joliet

Edward

Delivered in open court in Luxembourg on 1 April 1993.

J.-G. Giraud

Registrar

G. C. Rodríguez Iglesias

President of the First Chamber