

**Judgment of the Court of 25 January 1979. - A. Racke v Hauptzollamt Mainz. - Reference for a preliminary ruling: Bundesfinanzhof - Germany. - Monetary compensatory amounts - Publication of regulations. - Case 98/78.**

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**Keywords**

*1 . COMPLEX ECONOMIC SITUATION - EVALUATION - ADMINISTRATION - DISCRETION - SCOPE - REVIEW BY THE COURT - LIMITS*

*2 . AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - WINE - WINES IMPORTED FROM NON-MEMBER COUNTRIES - REFERENCE PRICES - MONETARY COMPENSATORY AMOUNTS - PURPOSE OF EACH*

*( REGULATION NO 816/70 OF THE COUNCIL , ART . 9 ; REGULATION NO 974/71 OF THE COUNCIL , ART . 1 )*

*3 . AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - WINE - WINES IMPORTED FROM NON-MEMBER COUNTRIES - CONCEPT OF ' ' QUALITY WINES ' ' - ABSENCE - ASSIMILATION TO TABLE WINES*

*( REGULATION NO 816/70 OF THE COUNCIL , ART . 1 ( 4 ) ( B ) AND ( 5 ) )*

*4 . MEASURES ADOPTED BY AN INSTITUTION - REGULATION - PUBLICATION - DATE*

*( EEC TREATY , ART . 191 )*

*5 . COMMUNITY LAW - PRINCIPLES - NO RETROACTIVITY OF REGULATIONS - EXCEPTIONS - CONDITIONS*

*6 . AGRICULTURE - MONETARY COMPENSATORY AMOUNTS - RULES - RETROACTIVITY - LEGALITY*

*( REGULATIONS NOS 649/73 AND 741/73 OF THE COMMISSION )*

**Summary**

*1 . IN THE EVENT OF THE EVALUATION OF A COMPLEX ECONOMIC SITUATION , THE ADMINISTRATION ENJOYS A WIDE MEASURE OF DISCRETION . IN REVIEWING THE LEGALITY OF THE EXERCISE OF SUCH DISCRETION , THE COURT MUST CONFINE ITSELF TO EXAMINING WHETHER IT CONTAINS A MANIFEST ERROR OR CONSTITUTES A MISUSE OF POWER OR WHETHER THE ADMINISTRATIVE AUTHORITY DID NOT CLEARLY EXCEED THE BOUNDS OF ITS DISCRETION .*

*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 .

## **Parties**

*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 ,

## **Subject of the case**

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 ,

## **Grounds**

1BY 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

2THE 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?

' '

3ANNEX 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 .

4IN 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 .

5AS 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 .

6IN 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 .

7HOWEVER , 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 .

8THIS 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 .

9THE 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 ).

10HOWEVER , 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 .

11THE 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 .

12HOWEVER , 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 .

13THEREFORE 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

14THE 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 ?

''

15ARTICLE 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 .

16AS 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 .

17THEREFORE 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

18QUESTIONS 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?

''

19THE 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 .

20ALTHOUGH 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 .

21THEREFORE 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 .

## **Decision on costs**

### **COSTS**

22THE 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 .

## **Operative part**

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 .*