

COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION TO THE COUNCIL

on the compulsory bottling of quality wines psr in the region of production

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INTRODUCTION

Following the Council's request to the Commission to study all aspects relating to the bottling of quality wines psr in the region of production, and to submit a report before 1 March 1990, the Commission has declined its position as set out in this report. The Commission is aware of the growing interest generated by this problem among all operators in the wine sector, and of the commitment of the Member States not to introduce any new legislation on the bottling and movement of quality wines psr.

This report examines the matter in relation to Community law and sets out measures for enhancing the guarantee of authenticity of wine.

II. BACKGROUND

A. Historical development

1. The problem of compulsory bottling in the region of production has already been raised in the past in a number of parliamentary questions (e.g. No 189/73 by Mr. Cousté⁽¹⁾ concerning "vins d'Alsace", and No 123/80 by Mr. Marshall⁽²⁾ on the exportation of French wine for bottling in the United Kingdom).

In 1983 the Unione Italiana Vini (Federazione Nazionale del Commercio Vinicolo) drew the Commission's attention to pressure being brought to bear by certain operators to restrict bottling of quality wines psr to the Italian regions of production.

(1) OJ No C 22, 7.3.1974, p.9.

(2) OJ No C, 78, 19.3.1984, p.1.

2. In its answer to Mr. Cousté's written question the Commission pointed out that the French law of 5 July 1972 whereby "appellation contrôlée" Alsace wines must be bottled in the departments of France where the wine is produced, in fact amounted to a quantitative restriction on exports, contrary to Article 34 of the Treaty, inasmuch as, by narrowing down the exercise of an activity to a particular group of national operators to the exclusion of all others in the Community, it acted as a barrier to exports which could take place in its absence.

However, as it was a measure aimed at protecting a particular registered designation of origin, the Commission at the time considered that the measure in question was covered by Article 36 of the Treaty by virtue of which the Member States may maintain or introduce prohibitions or restrictions on exports which are justified, in particular on grounds of the protection of industrial and commercial property.

In this context we would refer to a statement made by the French Government to the Council on 29 July 1974, in which it pointed out that it had no intention of extending compulsory bottling in the region of production to other quality wines psr.

Replying to Mr. Marshall's written question, the Commission, without referring to Articles 34 and 36 of the Treaty, had pointed out that the abovementioned law, given the circumstances of the case and the Court's jurisprudence at the time, did not constitute an illegal restriction on the movement of goods within the Community.

The Commission's position leads to the following conclusions:

- the Commission was opposed to the general introduction of national rules making bottling in the region of production compulsory;
- it reserved the right to assess the legality of such measures on a case by case basis in the light of the provisions of the Treaty and the common market organization for wine.

B. Recent national legislation

In view of the fact that there is a growing tendency for Member States to make bottling in the region of production compulsory (see summary below), particularly since 1988, the Commission is fully aware of the need to review this complex issue - not least because the objectives of the Single Market which has to be completed by the end of 1992.

1. In France, draft Law No 88-1202 of 30 December 1988, which complements the abovementioned Law of 5 July 1972, provided that the scope of the latter should be extended as of 1 October 1990 to include other AOC wines in cases where bottling in the area of production exceeded two thirds of the annual harvest and implementing provisions were fixed by decree. At its sitting of 22 November 1989 the National Assembly agreed at the second reading not to make the bottling of AOC wines in their region of production on certain conditions compulsory.
2. In Spain the Spanish Ministry of Agriculture's Royal Decree No 157/1988 of 22 February 1988 sets out the framework provisions for the designation of origin and qualified designation of origin for wines. Article 19(1)(b) of this decree, to which the autonomous regions may add specific provisions for each designation of origin, states that wines with qualified designations of origin must be bottled in "bodegas de origen" situated in the regions of production;

The granting of the qualified designation of origin, moreover, is subject to the following conditions:

- at least 90% of the vines cultivated for the production of wine grapes in the area concerned must be entered in the designation of origin vine register;
- at least 90% of the total production of the area concerned must be entered in the cellar register⁽¹⁾.

Under a transitional provision compulsory bottling as referred to above is subject to a derogation in respect only of sales on a market other than the national market, for a five-year period commencing on the day of publication of the royal decree in question (24.2.88). According to the information at the Commission's disposal, the Consejo Regulador de Rioja has decided to progressively reduce the percentage of exports in bulk, to reach zero level by 1992 (reductions in relation to quantities initially exported in bulk: 20% in 1989, 20% in 1990, 30% in 1991 and 30% in 1992).

(1) This refers to "bodegas de elaboracion", bodegas de almacenamiento, bodegas embotelladoras and bodegas de crianza (cellars for production, storage, bottling and ageing, respectively).

3. In Italy the "provisions, conditions and definition of geographical areas with respect to bottling" are governed by Presidential Decree on the basis of draft Law No 1017 of May 1988 of the Senate of the Italian Republic, which establishes "Nuove norme per la tutela delle denominazioni di origine dei mosti e dei vini". This system could be used to make the bottling of quality wines psr in the region of production compulsory. The Italian authorities have pointed out that this draft law, which amends the basic law governing the recognition of D.O.C.G. (controlled and guaranteed designation of origin) wines has the support of the Senate. Further discussions on this draft law have, however, been suspended as doubts have arisen concerning its compatibility with certain principles of the constitution of the Italian Republic.

At present, although Italian legislation requires D.O.C.G. wines to be bottled before they can be sold, it does not require bottling to take place within the region of production. It should be pointed out here that this applies only to D.O.C.G. wines. The sale to the consumer of D.O.C. wines is not subject to any compulsory bottling requirement, which is therefore a matter of free choice on the part of the operator.

Quality is protected by a system of labelling, the labels being issued after tasting by committees on the basis of samples drawn at the bottling plants. The only exception to this rule applies to Marsala, in respect of which Italian legislation provides for compulsory bottling in the region of production with a view to conserving the "Marsala" designation, with the exception of Marsala used as a base for certain spirituous drinks (e.g. Marsala with eggs, Marsala with mint).

4. In Luxembourg, national legislation governing the establishment of the national trade mark ("marque nationale - restricted to quality wines psr) specifies that wine which has obtained the "marque nationale" must be sold under the Luxembourg regional designation of origin label. Such wine may only be sold in bottles. Each bottle must display the neck label required by national legislation. An exception to this rule is wine which has obtained the "marque nationale" and which is sold inside the country under commercial transactions between producers and wholesalers for the purpose of the production of sparkling and semi-sparkling wines.

Wine which has been bottled for at least 6 weeks may be eligible for one of the following quality classifications:

- vin classé;
 - premier cru;
 - grand premier cru.
5. In Portugal, there are moves to introduce compulsory bottling for port wine from 1995 onward.
6. In Germany, a wine does not become a quality wine psr until it has received a control number and passed an organoleptic and analytical test. Control numbers are given only to bottled wines. Arrangements do, however, exist with a number of countries (e.g. Belgium, the United Kingdom and Sweden) which allow for the transport of wine in bulk, provided the containers are sealed and control samples are taken at the points of departure and arrival.

II. LEGAL ASSESSMENT OF RULES MAKING BOTTLING IN THE REGION OF PRODUCTION COMPULSORY

1. The obligation to bottle quality wine psr in the region of production implies a ban on the transport of that wine in bulk beyond that region to other Member States or other regions of the Member State concerned, as well as to non-member countries. Consequently, bottling must be carried out by the producers themselves or by bottlers within the region.

In as much as producers cannot transport wine in bulk for it to be bottled in the area of consumption, they have lost their freedom to dispose of their product in the way most advantageous to them and are not free to sell their product to a bottler outside the region of production who may offer them more favourable terms. Consequently, national legislation under which wine must be bottled in the region of production favours the industry of that region inasmuch as the latter in effect has an exclusive right to bottling the wine, to the detriment of operators in the countries to which the wine is exported.

A further increase in the number of such regional measures would have dangerous consequences for the common market since it would break up national markets into regional ones instead of integrating them into one single market.

- 2a) A ban on the movement of wine in bulk to other Member States is an obstacle to intra Community trade and, as such, an infringement of Article 34 of the EEC Treaty, which states that "Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States". With regard to products subject to market organizations the Court has ruled⁽¹⁾ that Article 34 of the EEC Treaty is an integral part of common market organizations.

(1) See judgment in Case No 83/78, Pigs Marketing Board vs Redmond, ECR 1978, p.2347, paragraph 55 of the legal grounds.

The ban mentioned in Article 34 of the Treaty also covers measures applying to the production stage⁽¹⁾.

- b) With regard to movements of quality wine psr in bulk from the region of production to other parts of the Member State concerned, the Court has ruled that common market organizations are based on the principle "...of an open market to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by that organization⁽²⁾".
 - c) With regard to exportation to non-Member States, compulsory bottling of quality wines psr in the region of production is contrary to the provisions concerning trade with third countries as set out in Articles 52 et seq. of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine⁽³⁾. Article 60(2)(b) of this Regulation prohibits "the application of any quantitative restriction or measure having equivalent effect".
 - d) Generally speaking, such a system would also be incompatible with the exhaustive nature of the system established by the marked organization in the sector concerned.
3. Some might argue that compulsory bottling in the region of production is necessary to guarantee the authenticity of wine. The point that needs to be answered therefore is whether the measure in question is justified on one of the grounds set out in Article 36 of the EEC Treaty, i.e. the protection of industrial and commercial property.

It is true that, as soon as the wine has left the producer's cellars, the risk of fraud (e.g. blending) during transport in bulk cannot be entirely excluded. One should, however, remember that wines which are not bottled on the spot by the producer under his responsibility and in his own establishment - this applies both to wines sold in the region of production and others - must at some stage be transported in bulk. This operation is subject to a system of checks and is covered by a transport document which guarantees that the transport, given modern methods, in no way affects the authenticity of the wine regardless of the distance covered, subject to the second indent of Article 3(2)(d) of Regulation (EEC) No 986/89⁽⁴⁾. The argument based on Article 36 of the Treaty must consequently be rejected.

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- (1) See the judgment in Case 118/86, Nertsvoeder fabriek Nederland B.V. - Destructiewet - ECR 1987, p. 3903.
 - (2) See the abovementioned judgment 83/78, Eggs Marketing Board/Redmond, ground 57.
 - (3) OJ No L 84 of 27.3.1987, p.1.
 - (4) OJ No L 106 of 18.4.1989, p.1. Under this provision no document is required, provided the competent authority of the Member State concerned has so authorized, to accompany transport of the wine within the same or to a neighbouring administrative area, when no change of ownership of the product in question is involved and the transport is carried out for the purpose of bottling.

4. The Court has pointed out that Article 34 of the Treaty does not always apply to national policies on quality⁽¹⁾. This jurisprudence, however, does not apply to compulsory bottling, as it would be difficult to argue that a prohibition on the transport of wine in bulk beyond the region of production is a factor in guaranteeing the authenticity of the wine, while transport in bulk within the region is allowed. Compulsory bottling in the region of production does not in itself give the consumer any additional guarantee regarding the authenticity of the wine in question.
5. The above conclusions are not incompatible with Article 18 of Council Regulation (EEC) No 823/87 of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions⁽²⁾. In its amended form (amended by Regulation (EEC) No 2043/89⁽³⁾) this article stipulates that producer Member States may, subject to fair and traditional practices:
 - determine such other conditions of production and characteristics as shall be obligatory for quality wines *psr* in addition to the factors listed in Article 2,
 - in addition to the other provisions laid down in the Regulation, lay down any additional or more stringent characteristics of production, manufacture and movement in respect of the quality of wines *psr* produced in their territory."

In view of the fact that the abovementioned Article 18 refers to fair and traditional practices the Commission does not consider that these provisions apply to the problem in hand, as there is no doubt that exportation in bulk has been going on for centuries in accordance with such practices. In any case, since Article 34 of the Treaty is an integral part of the common organization of markets and represents primary Community legislation, a provision under secondary Community law such as the abovementioned Article 18, may not deviate from it⁽⁴⁾. Article 18 should therefore be interpreted in the light of this requirement under primary law.

(1) See judgment in Case 237/82 Jongeneel Kaas, ECR 1984, p.495.

(2) OJ No L 84 of 27.3.1987, p.59.

(3) OJ No L 202 of 14 July 1989, p.1.

(4) See judgment in joined cases 80 and 81/77, Les Commissionnaires Réunis et les Fils de Henri Ramel contre Receveur des douanes, ECR 1978, p.927, ground 35, as well as the judgment in Case 216/84, "succédanés de lait", ECR 1988, p.793.

III. ENHANCEMENT OF THE GUARANTEE OF AUTHENTICITY OF WINE

Whereas compulsory bottling in the region of production clashes with a number of principles laid down in the Treaty, there is a need to expose ways of reinforcing Community provisions on controls, the authenticity of wine and the protection of the consumer. Now that the prospect of the completion of the Single Market has made such reinforcement essential, a number of different Community measures should be envisaged.

Bearing in mind the essential requirements of the Single Market and the concerns of producer Member States to ensure the authenticity of their wines, Community provisions in this regard can be reinforced through the measures set out below.

1. BOTTLING ON A VOLUNTARY BASIS BY THE PRODUCER OR UNDER HIS CONTROL

1.1. The wine producer, i.e. the person having carried out the wine making process⁽¹⁾, may himself decide that bottling will be carried out under his personal supervision.

The wine is then bottled in the producer's cellar, if necessary with the help of an itinerant operator who will provide his bottling equipment. In the current situation a certain degree of authenticity is guaranteed under Article 2 (3)(f) and Article 11(2)(q) of Regulation (EEC) No 2392/89⁽²⁾ as amended by Regulation (EEC) No 3886/89⁽³⁾. The guarantee of authenticity is displayed on the label in the terms referred to in Article 17(1) of Regulation (EEC) No 997/81⁽⁴⁾, as last amended by Regulation (EEC) No 632/89⁽⁵⁾ (e.g. "Erzeugerabfüllung", "mis en bouteille à la propriété", "mise d'origine", "mis en bouteille par les producteurs réunis", "imbottigliato all'origine", "embotellado por el productor").

1.2. It is, however, common for producers who do not themselves have the necessary equipment for bottling to ask e.g. a bottling plant to bottle their wine for them. This practice is known in French as "embouteillage à façon". The filled bottles are, strictly speaking, sold by the producer regardless of whether they are taken back and stored in his cellars after the operation. In such cases there does not appear to be an adequate guarantee of authenticity in the absence of specific checks carried out by the producer himself.

(1) The term "wine-making process" here is understood as equivalent to "turning into wine" as defined in Article 3 of Regulation (EEC) No 2202/89, OJ No L 209 of 21.7.1989, p. 32.

(2) OJ No L 232 of 9.8.1989, p. 13.

(3) OJ No L 378 of 27.12.1989, p.12.

(4) OJ No L 106 of 16.04.1981, p.1

(5) OJ No L 70 of 14.3.1989, p.6.

According to the judgment given by the Court of Justice on 18 October 1988 in Case 311/87, the use of the term "Erzeugerabfüllung" (bottled by the producer) - in this case by a group of wine growers whose wine was bottled by an undertaking not part of that group - is subject to the condition that the entire operation is in effect managed by the producer, under his close and permanent supervision and on his exclusive responsibility.

In the case of "embouteillage à façon" the guarantee of the authenticity of the wine must be enhanced by insisting that bottling⁽¹⁾ should be carried out under the personal supervision of the producer and that the latter remains fully responsible for the operation.

Bearing in mind, moreover, that wines bottled under the personal supervision of the producer may make certain claims on the label, such as "Erzeugerabfüllung", and that the risk of illegal handling of quality wine *psr* increases once such wine is no longer under the producer's control - regardless of whether it is bottled in the region concerned or elsewhere - claims that the wine is bottled in the region of production as provided for in Article 11(2)(r) of Regulation (EEC) No 2392/89 should be removed, since the use of such claims is conditional on such practices being traditional within the specified region in question.

2. THE USE OF CONTROL MARKS

Several Member States already require the use of a control mark which is destroyed when the bottle is opened (tax band, capsule, seal). This is done for fiscal reasons but also for monitoring the quantities of quality wines *psr* brought onto the market. The bottler must request the competent authorities to provide him with an adequate number of control marks, depending on the quantity of wine which he intends to bottle. The authorities keep accounts of control marks distributed and monitor the correct use of marks by on-the-spot checks. Harvest, production and stock declarations of wine sector products as laid down by Regulation (EEC) No 3929/87⁽²⁾ and the obligation to enter each batch of wine in the registers (see Article 16 of Regulation (EEC) No 986/89⁽³⁾) enable the authorities to carry out detailed monitoring of bottling operations and the use of the control mark affixed to each bottle.

(1) According to Article 4 of Regulation (EEC) No 2202/89 "bottler" refers to the natural or legal person, or the association of such persons, who carries out or commissions bottling.

(2) OJ No L 369 of 29.12.1987, p.59.

(3) OJ No L 106 of 18.4.1989, p.1.

Whether the utilization of a control mark should be regulated at Community level requires further investigation. Community rules in this regard might be necessary to avoid discrepancies which could create obstacles to the free movement of goods, which would be contrary to Article 30 of the Treaty, which states that all measures having the equivalent effect to quantitative restrictions on imports between Member States should be prohibited. It goes without saying that Community regulation would be restricted to quantitative and qualitative controls, leaving fiscal aspects relating to the utilization of control marks to the national authorities.

3. IDENTIFICATION OF BATCHES OF WINE BOTTLED

Experience gained by the agencies responsible for the detection of fraud in the wine sector has shown the usefulness of identifying batches of wine bottled by means of a specific marking on each bottle belonging to the same batch. It should be possible to indicate in respect of each bottle the day of bottling and, by cross-checking with entries in registers, the recipient containing the wine before bottling. Such marking should be undertaken in accordance with Directive 89/396/EEC⁽¹⁾, which implies adapting the general rules on the designation of wine in Regulation (EEC) No 2392/89.

4. INDICATION OF THE BOTTLER BY CODE

Articles 3(4)(c) and 12(4)(b) of Regulation (EEC) No 2392/89 provide that the name and business name of the bottler, i.e. the person who bottles or who commissions bottling, may be indicated by using a code. The application of that provision is linked to the condition that the Member State in whose territory the wine is bottled has permitted the use of a code and that the label gives in full the name and business name of another person involved in the commercial distribution of the wine in question. The implementing provisions⁽²⁾ provide that such codes are to be established by the Member States in whose territory the bottler has his registered address and that the Member State must be indicated by the postal abbreviation.

The indication of the bottler by a code is traditional and customary in certain Member States, in particular Belgium and the Netherlands. It has obvious commercial advantages in that one and the same wine may be sold under different labels (e.g. in the case of a trader who has several firms and brands). That trader makes up the label on request from the customer and conceals the compulsory indication of the bottler by a code which in any case shows in which Member State the bottling has taken place. These rules provide a certain degree of commercial flexibility. However, they have not always been appreciated by consumer associations, who are of the opinion that it is in the consumer's interest to know the name and the business name of the bottler, without being compelled to undertake complicated research to decipher a code.

(1) OJ No L 186, 30.6.1989, p.21.

(2) See Article 17(2) of Regulation (EEC) No 997/81.

Within the context of the single market a situation in which the Member States can apply codes indicating the bottler when the wine is transported from a Member State applying the code to another Member State which does not apply it, is not acceptable. The consumer's concern to know the name and business name of the bottler should moreover be recognized. A review of the rules governing indication of the identity of the bottler by code would therefore seem to be inevitable.

5. SYSTEM FOR TAKING SAMPLES

It should be remembered that under Regulation (EEC) No 986/89 the transport of wine in bulk must be accompanied by an approved commercial document or an accompanying document indicating the consignor, the consignee, data concerning the identity of the wine, the date of departure, and the document number to enable each individual consignment to be traced. References to this document must be entered in the register of withdrawal of the consignor and the register of entry of the consignee. By way of additional control measures applicable to the carriage of quality wine p.s.r. in bulk, it could be provided that the competent authorities for the implementation of Regulation (EEC) No 986/89 whose name and address are published pursuant to Article 22 of the abovementioned Regulation officially seal the bulk tanker lorries at the point of loading with an appropriate closing device. This closing device may only be broken on arrival with the permission of the competent authorities at the point of unloading. Moreover, the competent authorities at the point of unloading must take samples which are to be compared by an analytical and organoleptic examination with samples taken on arrival to check the identity of the wine.

IV. CONCLUSIONS

1. The compulsory bottling of quality wine in the region of production is not compatible with the principles of Community law in as much as it is an infringement of
 - Article 34 of the Treaty, as regards trade between Member States,
 - the principle of free access to markets, established by the common organization of the market in wine, with regard to trade within the Member State concerned, and
 - Article 60(2)(b) of Regulation (EEC) No 822/87, with regard to trade with non-member countries.
2. The above conclusions cannot be overridden by Article 18 of Regulation (EEC) No 823/87, as amended by Regulation (EEC) No 2043/89, since a provision under secondary law cannot prevail over the fundamental principles of Community law. The abovementioned Article 18, moreover, can only be applied with regard to fair and traditional practices.
3. The Commission will examine what transitional measures are to be taken in respect of cases of traditional compulsory bottling, taking account of the positions previously adopted.

4. As regards the need to guarantee the authenticity of wine, in the interest of both producers and consumers, reinforced Community provisions concerning supervision and labelling/presentation are required.
5. The Commission will make adequate proposals as soon as possible with a view to improving existing Community legislation concerning supervision and labelling/presentation in the wine sector.
6. The Commission will examine to what extent and in what way trade associations and organizations in the wine industry can contribute to the enhancement of the guarantee of authenticity of wine.