EUROPEAN ECONOMIC COMMUNITY—FREE MOVEMENT OF GOODS—LEGISLATION OF A MEMBER STATE, RESERVING CERTAIN WINE APPELLATIONS FOR DOMESTIC PRODUCTS ONLY, HAS AN EFFECT EQUIVALENT TO PROHIBITED QUANTITATIVE RESTRICTIONS IF SUCH APPELLATIONS DO NOT DESCRIBE WINE PRODUCTS WHICH POSSESS QUALITIES AND CHARACTERISTICS ATTRIBUTABLE TO THEIR GEOGRAPHIC ORIGIN.

The Federal Republic of Germany enacted legislation restricting the use of certain wine appellations to German-produced wines, foreign wines originating in countries where German is the official language, and wines containing 60 percent German grapes.[1] The Commission of the European Communities (hereinafter referred to as the Commission)[2] determined[3]

---

[1] The German law on vine products . . . [the German Wine Act of July 14, 1971, [1971] BGBl. I 63], and the implementing regulation . . . [the Sparkling Wine and Brandy Regulations of July 15, 1971, [1971] BGBl. I 64], provide, *inter alia*:

(a) for *sparkling wines*:

—that the appellation "Sekt" may describe only a *home-produced* sparkling wine which satisfies the conditions of quality required by Section 3 of the implementing regulation on sparkling wines and spirits obtained by distilling wine and may be applied to quality foreign wines only if German is an official language throughout the whole of the country of production (Section 8 of the foregoing regulation). By virtue of Section 26(3) of the law on vine products, this appellation *may*, moreover, be linked to the condition that the sparkling wine be produced from a minimum proportion of home-grown grapes;

—that the appellation "Prädikatssekt" may describe only a home-produced sparkling wine which fulfills the above-mentioned conditions and contains at least 60 percent of home-grown grapes;

(b) for *spirits obtained by distilling wines*:

—that the appellation "Weinbrand" may be used only for products entitled to the appellation "spirits obtained by distilling quality wine" (Qualitatsbranntwein aus Wein) and if German is an official language throughout the whole of the country of production . . . .

As regards sparkling wines and spirits obtained by distilling foreign wines other than those coming from countries in which German is the official language, the law on vine products and the regulation referred to above provide that the designations applicable are, according to the quality, respectively those of "Schaumwein" or "Qualitatsschaumwein" and "Branntwein aus Wein" or "Qualitätsbranntwein aus Wein."

Commission of the European Communities v. Federal Republic of Germany, 2 CCH COMM. MKT. REP. ¶ 8293, at 7382 (1975).

[2] The Commission is the executive branch of the European Economic Community (EEC). It is composed of 13 members who are appointed on the basis of their competence and independence by mutual agreement of the governments of the Member States. The four largest Member States—France, Germany, Italy, and the United Kingdom—have two commissioners each, and the other Member States have one each. A. PARRY & S. HARDY, EEC LAW (1973).

[3] The Commission's action was pursuant to article 169(1) of the Treaty Establishing the European Economic Community, *done* March 25, 1957, 298 U.N.T.S. 11 (unofficial English version) [hereinafter cited as Rome Treaty]. The Treaty may also be found in CCH COMM. MKT. REP. 151 *et seq.* (1973). Article 169, paragraph 1 states that if the Commission considers

that the German restrictions were equivalent in effect to quantitative restrictions on trade between Member States of the European Economic Community (EEC), which are prohibited by article 30 of the Treaty Establishing the European Economic Community (hereinafter referred to as the Rome Treaty)[4] and, as regards sparkling wines, article 12, paragraph 2(b) of Council Regulation No. 816/70 of April 18, 1970.[5] When Germany refused to terminate the alleged infringements, the Commission brought suit in the European Court of Justice[6] under article 169, paragraph 2[7] of the Rome Treaty seeking a declaration by the Court that Germany had failed in its obligations under that Treaty and under Council Regulation No. 816/70.[8] *Held*, Commission's request granted. Measures restricting the use of names which are not indicative of origin or source to domestic products

---

that a Member State has failed to fulfill an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the Member State concerned the opportunity to submit its observations.

[4] Note 3 *supra*. Article 30 states that quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

[5] Additional Provisions for the Common Market Organization for Wine, [1970] E.E.C. J.O. No. L.99, 1 CCH COMM. MKT. REP. ¶ 614, at 677 (1973). This regulation implemented the community wine market organization for wines not requiring distillation. Hence, for the purpose of this decision, its significance concerns sparkling wines alone. Article 12(2)(b) of Regulation No. 816/70 prohibits the application of quantitative restrictions or measures having equivalent effect in wine trade with third countries.

[6] The Court of Justice is the institution responsible for ensuring that the law of the EEC is observed. It has three primary powers under the treaty: settling disputes, rendering binding opinions, and rendering preliminary rulings. P. KAPTEYN & P. VAN THEMATT, INTRODUCTION TO THE LAW OF THE EUROPEAN COMMUNITIES AFTER THE ACCESSION OF NEW MEMBER STATES 90 (1973).

[7] Article 169, paragraph 2 states that if the Member State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

[8] Article 171 of the Rome Treaty requires that Member States found guilty of failure to fulfill an obligation under the Treaty take the necessary measures to comply with the judgment of the Court.

In support of its contention that Germany had failed to fulfill a Treaty obligation the Commission argued that the terms *"Sekt"* (sparkling wine) and *"Weinbrand"* (brandy) were generic terms which Germany could not convert to protected indications of origin by legislation and that these terms had more consumer appeal than names allowed imported wines, thereby placing the wine products of other countries at a disadvantage. The Commission also argued that Commission Directive 70/50 of December 22, 1969, requiring abolition of and enumerating measures having an effect equivalent to quantitative restrictions in existence *when* the Rome Treaty entered into force, applied also to measures introduced in a Member State *after* the Treaty entered into force. Directive 70/50. This Directive was based on the provisions of article 33, paragraph 7 of the Rome Treaty, which required the abolition of measures which have an effect equivalent to quantitative restrictions on imports and which are not covered by other provisions adopted in pursuance of the Rome Treaty. [1970] E.E.C. J.O. L13/29. More specifically, the Commission claimed that Germany violated article 2(3)(s) of Directive 70/50, which prohibits measures which "confine names which are not indicative of origin or source to domestic products only."

only have an effect equivalent to quantitative restrictions contrary to article 30 of the Rome Treaty and, as regards sparkling wines, to article 12, paragraph 2(b) of Council Regulation No. 816/70. A name is not indicative of origin or source unless the product it designates does in fact possess qualities and characteristics attributable to the geographic locality of its origin, so as to distinguish it from all other products. *Commission of the European Communities v. Federal Republic of Germany*, 2 CCH COMM. MKT. REP. ¶ 8293 (1975).

The free movement of goods between Member States, a fundamental principle of the EEC,[9] is based on a theory of classical free trade.[10] This principle is used to achieve economic integration through the elimination of national barriers between Member States so as to permit the natural economic forces within the Community to reallocate resources more efficiently.[11] For example, without artificial barriers an increase in competition from firms in other Member States should cause efficient firms to expand and inefficient firms to disappear or enter other fields.[12] This economic expansion and development, through one common market rather than several national markets, should also result in great economies of scale.[13] The provisions of the Rome Treaty incorporate this theory,[14] as well as modifications necessary for adaptation to the existing economic structure of the Member States.[15]

The free movement of goods is to be achieved through the establishment of a customs union[16] and through the elimination of quantitative restrictions between Member States.[17] Article 30[18] of the Rome Treaty prohibits not only quantitative restrictions, but also "all measures having equivalent effect" of quantitative restrictions in order to prevent Member States from evading the principle of the prohibition.[19] The phrase "measures having

---

[9] *See* Rome Treaty, *supra* note 3, art. 3.

[10] D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 1160 (1968) [hereinafter cited as VAGTS].

[11] Hjorth, *The Common Agricultural Policy: Crisis in the Common Market*, 40 WASH. L. REV. 685, 688 (1965).

[12] *Id.*

[13] VAGTS, *supra* note 10, at 1160.

[14] The achievement of economic integration is not limited to the establishment of free movement of goods. Article 3 of the Rome Treaty states that the goals of the EEC shall also be achieved through the abolition of obstacles to freedom of movement for persons, services, and capital among other activities.

[15] For example, article 8 of the Rome Treaty allows for a transition period of 12 years to allow the Member States to adapt. This period ended on December 31, 1969. 1 CCH COMM. MKT. REP. ¶ 195 (1973).

[16] Rome Treaty, *supra* note 3, arts. 12-29. The customs union requires the elimination of customs duties between Member States (arts. 12-17), the elimination of charges having an effect equivalent to customs duties (art. 12), and the establishment of a common customs tariff (arts. 18-29).

[17] *Id.* arts. 30-37.

[18] Note 4 *supra*.

[19] Commission of the European Communities v. Republic of Italy, COURT DECISIONS, CCH COMM. MKT. REP. ¶ 8079 (Transfer Binder 1969).

equivalent effect" is not defined in the Rome Treaty; however, the European Court of Justice has accepted the Commission's view[20] by stating that it covers "all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-community trade."[21]

Article 30 and the other provisions of the Rome Treaty on the free movement of goods[22] apply not only to industrial goods, but also to agricultural products.[23] However, the Rome Treaty includes additional provisions specifically governing the agricultural sector.[24] These provisions require the adoption of a common agricultural policy[25] with the goals of increasing agricultural productivity, ensuring a fair standard of living for the agricultural community, stabilizing markets, assuring the availability of supplies, and ensuring that supplies reach consumers at reasonable prices.[26] These objectives are to be achieved mainly through the organization of Community markets.[27]

Wine and wine products have been subject to regulation under the Rome Treaty since 1962 when Council Regulation 24/62[28] was enacted.[29] However, completion of the regulations implementing the Community wine market

---

[20] The Commission has stated that this concept includes any provisions set forth by statutes, regulations, administrative actions, administrative practices, practices of a public authority, or practices which can be imputed to a public authority, precluding imports which might otherwise take place. [1967] E.E.C. J.O. 9/901.

[21] Public Prosecutor v. Benoit and Gustave Dassonville, 2 CCH COMM. MKT. REP. ¶ 8276 (1974) (CCH head note).

[22] Rome Treaty, *supra* note 3, arts. 9-37.

[23] *Id.* art. 38. Article 38 states in part:

> 1. The Common Market shall extend to agriculture and trade in agricultural products . . . .
>
> 2. Save where there are povisions to the contrary in Articles 39 to 46 inclusive, the rules laid down for the establishment of the common market shall apply to agricultural products.

[24] *Id.* arts. 38-47.

[25] *Id.* art. 38, para. 4.

[26] *Id.* art. 39.

[27] *Id.* art. 40, para 2.

[28] Council Regulation 24/62, [1962] E.E.C. J.O. 30, in the "opinion of its authors was only 'the beginning of a common policy of the Member States for solving wine and viticultural problems'." R. & V. Haegeman v. Commission of the European Communities, COURT DECISION, CCH COMM. MKT. REP. ¶ 8181, at 8447 (Transfer Binder 1972).

[29] R. & V. Haegeman v. E.C. Commission, CCH COMM. MKT. REP. ¶ 8181, at 8447 (1972) (Submissions of the Advocate General) stated:

> Regulation 24/62 was really a preparatory act that was intended to permit, through an exact knowledge of the production potential of Member States and the periodic estimates of the quantities of wines and musts available, a later organization that was designed to stabilize prices by adjusting supply to demand. Thus the regulation provided for the establishment of a register of vineyards, the mandatory reporting at regular intervals of harvests and stocks on hand, and a provisional annual balance sheet, so that the available supply and possible needs of the Community could be estimated.

organization was delayed until 1970.[30] Because the wine-growing policies and conditions of the Member States varied widely,[31] compromise could not be reached.[32] Also, the major wine-producing Member States wished to allow only Community-produced wine products to be sold in their countries, whereas the other Member States wanted to continue to import wine from non-Member States in order to satisfy their demand.[33] Germany in particular, due to its desire to maintain national autonomy in merchandise legislation, hindered efforts to complete the regulations.[34] The German Wine Act and the Sparkling Wine and Brandy Regulations[35] were enacted pursuant to the completed regulations which implemented the wine market.[36]

In affirming the Commission's decision that Germany's legislation violates article 30 of the Rome Treaty in the instant case, the European Court of Justice first emphasized that the German legislation must be considered in light of the prohibitions in the Rome Treaty[37] and Regulation No. 816/70.[38] However, the Court relied on the language in article 2, paragraph 3(s) of Directive 70/50.[39] The Court stated that designations and indications of origin as used in that Directive could only be protected if they ensured the protection of producers against unfair competition and the protection of consumers against error. Such terms could only do this if they designated products which did in fact possess qualities and characteristics attributable to the geographic locality of their origin; indications of origin could only be used if the geographic origin of the product gave it a distinctive quality and specific characteristics.[40] The Court said that the German

---

[30] The implementing regulations were: Regulation 816/70 of April 18, 1970, Additional Provisions for the Common Market Organization for Wine, [1970] E.E.C. J.O. No. L.99, 1 CCH COMM. MKT. REP. ¶ 614, at 677 (1973); Regulation 817/70 of April 28, 1970, Special Provisions for Quality Wines Produced in Specific Regions, [1970] E.E.C. J.O. No. I. 99, 1 CCH COMM. MKT. REP. ¶ 616, at 699-12 (1973).

[31] OECD, REPORT ON THE AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY 70 (1973) [hereinafter cited as OECD].

[32] Cohen, *EEC Wine Regulation*, 10 COMM. MKT. 117 (1970).

[33] *Id.*

[34] *Id.* The regulations were finally completed because Italy refused to confirm other regulations if the wine regulations were not completed. *Id.*

[35] German Wine Act of July 14, 1971, [1971] BGBl. I 63; Sparkling Wine and Brandy Regulations of July 15, 1971, [1971] BGBl. I 64.

[36] Regulations cited note 30 *supra*; *see* Commission of the European Communities v. Federal Republic of Germany, 2 CCH COMM. MKT. REP. ¶ 8293, at 7382 (1975).

[37] Rome Treaty, *supra* note 3, arts. 30-37.

[38] 2 CCH COMM. MKT. REP. ¶ 8293, at 7389. The Court referred specifically to article 12, paragraph 2(b) of this Regulation. See note 5 *supra*.

[39] 2 CCH COMM. MKT. REP. ¶ 8293, at 7389. Article 2, paragraph 3(s) of Directive 70/50 states that measures which have an effect equivalent to quantitative restrictions on imports include those which "confine names which are not indicative of origin or source to domestic products only." [1970] E.E.C. J.O. L13/29.

[40] 2 CCH COMM. MKT. REP. ¶ 8293, at 7389. Prior to the *Sparkling Wines* decision, the Court had not defined "indications of origin" in this context.

wine legislation regarding the terms *"Sekt"* and *"Weinbrand"* did not fulfill these criteria because the geographical origin could not be a national territory[41] nor be defined by a national language.[42] Also, the German wine could be manufactured from grapes of indeterminate origin, the method of manufacture used in Germany could be used in other countries, the quality standards for wines imported to Germany were similar to those applicable to German wines, and not all German manufacturers were required to use the same production methods. Hence, the German products *Sekt* and *Weinbrand* did not have peculiar qualities and unique characteristics which would make them typically German products.[43] The Court also determined that the term *"Prädikatssekt"* could not be protected because the use of 60 percent German grapes could not give a wine product a special quality justifying protection.[44]

The Court concluded that, because the German legislation confined names not indicative of source or origin to domestic products and because such reservation of terms would force other Member States to use terms which are unknown or less appreciated by the consumer, the wine laws favored the internal marketing of German products at the expense of the products from other Member States.[45] The German restrictions thus violated article 30 of the Rome Treaty and article 12, paragraph 2(b) of Regulation No. 816/70.[46]

At first reading the Court's analysis appears contradictory. The Court stated that indications of origin could only be protected if they insured both the interests of the producers against unfair competition and the

---

[41] *Id.* at 7390. Germany argued that

> the appellations "Sekt" and "Weinbrand" are closely linked to a particular German method of producing the products to which they apply. This method, which was later defined by the legislature, consists of a specific combination of several elements, capable of being supervised in all its details, by means of which products are obtained with a specific taste ("German flavor"). This taste confers on the products described as "Sekt" and "Weinbrand" their specific characteristics, as a result of which it is impossible to confuse them with foreign sparkling wines and spirits obtained by distilling wine. For producers based outside Germany to imitate this ta&te would be very difficult if not impossible, because of the economic and financial problems it would involve.

Id. at 7384.

[42] *Id.* at 7390. Germany submitted that the "official language clause was inserted because Austria also had legislation regulating the use of the names *"Sekt"* and *"Weinbrand."* Germany was faced with the choice of forbidding the use of those names on imported Austrian products or of making an exception. The German legislature chose the latter course because German imports of Austrian *Sekt* and *Weinbrand* were small and generally confined to frontier areas and because the act of forbidding the use of the names would have appeared as an unfriendly act toward Austria. *Id.* at 7385.

[43] *Id.* at 7390.

[44] *Id.* at 7391.

[45] *Id.*

[46] *Id.* at 7392.

interests of consumers against indications which could deceive them.[47] However, in reaching its decision, the Court appears to have shown a lack of concern for both consumers and producers. Indifference toward the effect of the legislation on *consumers* appears in the Court's rejection of Germany's argument that the legislation simply embodied the existing situation because German consumers recognized the restricted terms as referring to a domestic product.[48] Advocate General Warner[49] suggested in his submission to the Court[50] that this was true concerning *Weinbrand* because German public opinion polls showed that German consumers did in fact think of *Weinbrand* as a domestic product[51] and because brandy imports had always been small.[52] However, the Court rejected this submission as well as the suggestion[53] that new public opinion polls be taken as to whether the name *"Sekt"* had a greater appeal to the German public than *"Schaumwein"*[54] and whether *"Sekt"* connoted a German product. The Court said that Germany could not justify protection given indications of origin by relying on consumer opinion based on public opinion polls.[55]

The Court also refused to protect the German wine *producers*. First, it is well-known that the purpose of the legislation was to protect the German wine industry.[56] Germany argued that it could protect certain wine appellations because those terms were indirect indications of origin and similar indications were protected in other Member States.[57] Germany also argued

---

[47] *Id.* at 7390.

[48] *Id.* at 7391.

[49] The Court of Justice is assisted by four Advocates-General who have the duty, "to present publicly, with complete impartiality and independence, reasoned conclusions on cases submitted before the Court of Justice, with a view to assisting the latter in the performance of its duties as laid down in Article 164." Rome Treaty, *supra* note 3, art. 166.

[50] 2 CCH COMM. MKT. REP. ¶ 8293, at 7393.

[51] *Id.* at 7404-05. Three public opinion surveys were conducted in Germany concerning the meaning of the word *"Weinbrand"*. In the first survey, which was conducted in 1966, 75 percent of the people interviewed thought that *Weinbrand* was a German product, 5 percent thought it was a foreign product, 2 percent had never heard of it, and 18 percent did not know whether it was a German or a foreign product. Of those surveyed who bought or drank *Weinbrand*, 85 percent thought it was a German product. Two other surveys were conducted in 1973. In one, 87 percent of the sample thought *Weinbrand* was a German product; in the other, 80 percent thought it was a German product. *Id.*

[52] Germany produced 943,618 hectoliters of brandy in 1966, whereas imports amounted to only 59,516 hectoliters. *Id.* at 7404.

[53] *Id.* at 7403.

[54] In the German Wine Act of July 14, 1971, [1971] BGBl. I 63, and the Sparkling Wine and Brandy Regulations of July 15, 1971, [1971] BGBl. I 64, the term *"Schaumwein"* is to be used to describe a sparkling wine which does not meet certain quality standards. *"Schaumwein"* is also used to describe a sparkling wine in the German Text of Council Regulation No. 816/70, Additional Provisions for the Common Market Organization for Wine, [1970] E.E.C. J.O. No. L.99, 1 CCH COMM. MKT. REP. ¶ 614, at 677 (1973).

[55] 2 COMM. MKT. REP. ¶ 8293, at 7391.

[56] *See* Court Rules Against German Wine Designations, Developments, 2 CCH COMM. MKT. REP., Aug. 13, 1975, No. 272, at 6.

[57] 2 CCH COMM. MKT. REP. ¶ 8293, at 7385.

that even if the legislation were contrary to the provisions of article 30 of the Rome Treaty the restriction of appellations was permitted by article 36[58] if it could be justified on grounds of public policy (aimed at protecting consumers) or on grounds of protection of industrial and commercial property (aimed at protecting producers).[59] The Court answered these arguments by stating that the Rome Treaty does allow Member States to legislate on indications of origin, but the Member States cannot do this under the guise of article 36 when the effect is equivalent to a quantitative restriction.[60] Furthermore, derogations from article 30 are allowed under article 36 only when necessary to protect the producer and the consumer against *fraudulent* commercial practices,[61] and there was no possibility of such fraud in this case.[62]

However, this decision cannot be considered merely on the basis of anti-consumer and anti-producer language, but must also be considered in light of the economic and agricultural policies of the EEC as a whole. In order to ensure observation of the Rome Treaty, the Court must consider not only the literal meaning of the Rome Treaty's articles, regulations, and directives, but also the policies underlying such provisions.[63] In the *Sparkling Wines* decision, the policy considerations were extensive and the effects of the decision potentially far-reaching for several reasons.

First, the Member States have frequently introduced subtle restrictions on imports and exports in order to benefit local companies and industries.[64] Therefore, the Court should not only pierce the subterfuges of the Member States, but should also support the work of the Commission in exposing them.

A second policy consideration is that mutual support among the EEC institutions is imperative in order to achieve the goals of the EEC. The Court has indicated support for the Commission and the Council in this decision in several ways. It has supported the Commission in its enaction of Directive 70/50. Various Member States have refused to acknowledge

---

[58] Article 36 of the Rome Treaty, *supra* note 3, states:

> The provisions of Articles 30 to 34 inclusive shall not be an obstacle to prohibitions or restrictions in respect of importation, exportation or goods in transit which are justified on grounds of public morality, public order, or public safety, the protection of human or animal life or health, the preservation of plant life, the protection of national treasures of artistic, historic or archaeological value, or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute either a means of arbitrary discrimination or a disguised restriction on trade between Member States.

[59] 1 CCH COMM. MKT. REP. ¶ 8293, at 7385, 7388, 7392.

[60] *Id.* at 7392.

[61] *Id.*

[62] OECD, *supra* note 31.

[63] Bentil, *EEC Commercial Law and "Charges Having Equivalent Effect to Customs Duties,"* 9 J. WORLD TRADE L. 458, 463 (1975).

[64] *See, e.g.*, Public Prosecutor v. Benoit and Gustave Dassonville, 2 CCH COMM. MKT. REP. ¶ 8276 (1975).

that certain measures mentioned in that directive could have an effect equivalent to quantitative restrictions, and some Member States have even disputed the Commission's authority to decide such matters through the device of directives.[65] The Court's reliance upon Directive 70/50 and its interpretation of the Directive as extending to measures initiated after the Rome Treaty entered into force have given credence to the Directive as an EEC obligation.[66]

Support of the Commission in the agricultural area is even more important, since it is the prime formulator of agricultural policy in the EEC.[67] Before the Court rendered the *Sparkling Wines* judgment, another crisis occurred in the wine market[68] which may have had a primary influence on the *Sparkling Wines* decision. A wine surplus developed following record harvests in 1973 and 1974 when production of wine increased without a corresponding increase in consumption.[69] To cope with this crisis, the Commission proposed that the wine regulations[70] be substantially amended.[71] The *Sparkling Wines* decision was rendered shortly thereafter.[72] It is possible that the Court foresaw great difficulties which could possibly cause delay in reaching a compromise concerning any amendments to the wine regulations. Possibly the Court feared that during such a delay, other Member States might pass measures similar to Germany's self-protective legislation. Thus, support of the actions of the Council and of the Commission in its resolve to prevent further upsets in the wine market became crucial.

Unfortunately, the Court's prophecy concerning aggravation of the wine crisis has been fulfilled. First, new amendments to the wine regulations have not been enacted.[73] Secondly, in the summer of 1975, France proposed a tax on wine imports from Italy.[74] The Commission, possibly interpreting the *Sparkling Wines* decision as a sign of support by the Court, threatened to take France before the Court over the issue.[75] France, nevertheless,

---

[65] Oebele, *The Abolition of Measures Having an Equivalent Effect*, 10 COMM. MKT. 55, 57 (1970).

[66] The Court of Justice is not required to follow directives. *Id.* at 55.

[67] In theory the Council is the main decision-maker; however, "because of the complex workings of the agricultural sector and because of the highly specialized expertise required, in practice the true decision making role has been shifting more and more to the Commission . . . ." Norton, *The Heart of the Matter: U.K. and the EEC, the Problem of Agriculture*, 6 TEX. INT'L L.F. 221, 226 (1971).

[68] *Community Wine Market Due for Reorganization*, 2 CCH COMM. MKT. REP. ¶ 9756, at 9668 (1975) (Information Memo from the EEC Commission, No. P-30) [hereinafter cited as Commission Memo].

[69] *Id.*

[70] Regulations cited note 30 *supra*.

[71] Commission Memo, *supra* note 68, at 9668-69.

[72] The Court's decision was rendered on February 20, 1975.

[73] EUROMARKET NEWS, CCH COMM. MKT. REP., Sept. 25, 1975, No. 349, at 1.

[74] *Id.*

[75] *Id.*

implemented the tax, and the Commission has initiated formal proceedings against France under article 169.[76] In view of these developments, it appears that the ultimate impact of the *Sparkling Wines* decision lies not so much in its support of Commission Directive 70/50 as in its indication that it will construe the prohibitions of the Rome Treaty strictly when dealing with market areas immersed in crisis. The *Sparkling Wines* decision indicates that the Court will not tolerate even debatable violations of the Rome Treaty when market areas immersed in crisis are involved.

Julie M. Clifford

[76] EUROMARKET NEWS, CCH COMM. MKT. REP., Oct. 28, 1975, No. 354, at 2.