OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 13 June 2002 [1]

1. By an action brought on 18 December 2000, the French Republic has sought, pursuant to Article 230 EC, the annulment of Commission Decision No 2001/52/EC of 20 September 2000 (hereinafter 'the contested decision') [2] declaring as incompatible with the common market aid granted by France for the conversion of vineyards in Charentes and requiring recovery of the aid from the beneficiaries.

I — Legal framework

A — *The provisions of the EC Treaty*

2. The first paragraph of Article 36 EC provides:

'The provisions of the Chapter [of the present Treaty] relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 37(2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 33.'

3. Article 87(1) EC provides:

'Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.'

4. Pursuant to Article 87(3)(c) 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest' may be regarded as compatible with the common market.

1 — Original language: Italian.
2 — OJ 2001 L 17, p. 30.

B — *The relevant provisions of the common organisation of the wine market*

5. A common organisation of the markets (COM), introduced in the wine sector as from 1962, was supplemented for the first time in 1970 by Regulation (EEC) No 816/70. [3] Since then, the basic provisions of the COM in wine have been amended and supplemented on several occasions. In what follows I will refer to the provisions relevant to the present case.

(a) The COM in wine governed by Regulation (EEC) No 822/87

6. Regulation (EEC) No 822/87 [4] codified and supplemented the basic provisions concerning the COM in wine in force at that time. The 14th recital of that regulation states that:

'... the situation of the wine market with its large surpluses is deteriorating very rapidly and is likely... to jeopardise the attainment of the objectives of Article 39 of the Treaty (now Article 33 EC) because of the excessive pressure brought to bear on producers' incomes'.

7. For the purpose of guaranteeing a balanced market, Regulation No 822/87 therefore makes provision for a temporary ban on the new planting of vines. To that end, Article 6(1) provides:

'... All new planting of vines shall be prohibited until 31 August 1990.

However, authorisations for new plantings may be granted by Member States in respect of areas intended for the production of quality wines psr [quality wines produced in specific regions] production of which the Commission has recognised, because of their qualitative features, as being far below demand.'

The duration of that ban was subsequently extended on several occasions up to 31 August 2000. [5]

8. To the same end, Regulation No 822/87 lays down particularly stringent conditions

3 — See Council Regulation No 24/62 of 4 April 1962 on the gradual implementation of a common organisation of the wine market (OJ, English Special Edition 1959-1962) and Council Regulation No 816/70 of 28 April 1970 concerning additional provisions in regard to the common organisation of the wine market (OJ, English Special Edition 1970 (I), p. 234).

4 — Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine (OJ 1987 L 84, p. 1).

5 — See Article 1(1) of Council Regulation No 1627/98 of 20 July 1998 amending Regulation (EEC) No 822/87 on the common organisation of the wine market (OJ 1998 L 210, p. 8).

governing the granting of national aid for the planting of new vines. Article 14, as amended by Regulation (EEC) No 2253/88,[6] provides as follows:

'1. The granting of national aid for the planting of category 3 areas cultivated for the production of table wines shall be prohibited.

2. As regards the planting of wine-growing areas other than those referred to in paragraph 1, the granting of national aid shall be prohibited except where it is:

— laid down by specific Community provisions,

— allowed pursuant to Articles 92 to 94 of the Treaty [now Articles 87 to 89 EC] and contains criteria which should, in particular, enable the objective of reducing production quantity or of improving quality to be attained without leading to increased production. These criteria shall be adopted in accordance with the procedure laid down in Article 83.

3. The prohibition referred to in paragraph 2 shall apply as from 1 September 1988....'

9. Article 76 of Regulation No 822/87 subsequently renders the provisions of the Treaty concerning State aid applicable to the wine sector, save as otherwise provided in that regulation.

10. With Regulation (EEC) No 2741/89,[7] the Commission laid down criteria for assessing national aid as referred to in Article 14 of Regulation No 822/87. Pursuant to Article 3(1) of Regulation No 2741/89:

'... planting must involve varieties [of vines] which, in the terrain concerned:

— are not considered high-productivity varieties,

6 — Council Regulation No 2253/88 of 19 July 1988 amending Regulation (EEC) No 822/87 on the common organisation of the wine market (OJ 1988 L 198, p. 35).

7 — Commission Regulation (EEC) No 2741/89 of 11 September 1989 laying down criteria to apply under Article 14 of Council Regulation (EEC) No 822/87 on national aid for the planting of wine-growing areas (OJ 1989 L 264, p. 5).

— are recognised as improving quality,

— are specifically authorised by the national authorities under the draft aid measure concerned'.

11. The first paragraph of Article 5 of the same regulation further provides that:

'The amount of aid granted per hectare of vineyard planted may not exceed 30% of the actual cost of grubbing-up and planting'.

(b) The COM in wine governed by Regulation (EC) No 1493/1999

12. Council Regulation (EC) No 1493/1999 of 17 May 1999[8] repealed Regulation No 822/87, making far-reaching amendments to the COM in wine and re-establishing in a single text the provisions in force in the sector. That regulation entered into force on 21 June 1999, but became applicable on 1 August 2000.

8 — OJ 1999 L 179, p. 1. Regulation last amended by Regulation (EC) No 2585/2001 (OJ 2001 L 345, p. 10).

13. The 11th recital of Regulation No 1493/1999 states:

'to capitalise on and consolidate the improved market balance, and to better align supply on demand for different types of product, there should be a framework of measures on the management of wine-growing potential, to include restrictions on planting in the medium term, premiums for the permanent abandonment of wine-growing and support for the restructuring and conversion of vineyards'.

14. As regards the planting of new vineyards, Article 2(1) of the Regulation provides:

'Planting with vines of wine grape varieties classified pursuant to Article 19(1) shall be prohibited until 31 July 2010... .

Until the same date, grafting of wine grape varieties on to varieties other than wine grape varieties shall also be prohibited'.

15. With regard to the restructuring and conversion of vineyards, Article 11 provides:

'1. A system for the restructuring and conversion of vineyards is hereby established.

2. The objective of the system shall be the adaptation of production to market demand.

3. The system shall cover one or more of the following measures:

(a) varietal conversion, including by means of grafting on;

(b) relocation of vineyards;

(c) improvements to vineyard management techniques related to the objective of the system.

The system shall not cover the normal renewal of vineyards which have come to the end of their natural life....'

16. Further, pursuant to the second paragraph of Article 15 of the regulation, in the context of the implementing rules for the restructuring and conversion of vineyards, provision may be made for 'provisions aiming to prevent an increase in production potential arising out of this Chapter'.

17. Finally, Article 71(1) of Regulation No 1493/1999 provides that Articles 87 to 89 are applicable to the wine sector, save as otherwise provided in that regulation.

18. Commission Regulation (EC) No 1227/2000 of 31 May 2000[9] lays down detailed rules for the application of Regulation No 1493/1999, particularly as regards production potential, and repeals, *inter alia*, Regulation No 2741/89. As regards the restructuring and conversion of vineyards, Article 13(c) provides that the Member States are to establish:

'rules limiting the use, in implementing a plan [of restructuring and conversion], of replanting rights which arise from grubbing-up as set out in the plan where so doing would lead to a possible increase in

9 — OJ 2000 L 143, p. 1. Regulation last amended by Regulation (EC) No 1253/2001 (OJ 2001 L 173, p. 31).

the yield of the area covered by it. The rules shall be designed to ensure that the objective of the system is met, and in particular to ensure that there is no overall increase in production potential in the Member State concerned'.

II — Facts

A — *Antecedent facts and administrative procedure*

19. In February 1999, the French Government notified to the Commission a system of aid for the conversion of vineyards in Charentes from the production of cognac to 'vin de pays' (typical wines, that is to say table wines described by a geographical indication).[10] The purpose of the system was to promote wine production in line with consumer demand, whilst reducing the volume of cognac production in respect of which a crisis situation in the market had led to a considerable increase in stocks.

20. The system involved four separate aid measures, one of which consisted of a 'supplementary national aid for the improvement of vine varieties' (hereinafter 'the aid for varietal conversion' or, more simply, 'the aid'). I will limit my comments to that measure since it is with that measure that the contested decision is concerned.

21. The aid for varietal conversion provided for the granting of an additional payment of FRF 10 000 per hectare to wine growers who were eligible to benefit from a system of aid already existing in France, namely national aid for the improvement of vine varieties.[11] The purpose of such additional aid was to encourage, initially over an area of 1 000 hectares in the region concerned, the grubbing-up of Ugni-blanc vines and the subsequent planting of certain other vines for the production of 'vins de pays'.

22. In May and June 1999, the French authorities provided additional information to the Commission. They explained the economic context of the system notified indicating, in particular, that in Charentes wine-growing is highly specialised in the production of wines destined for distillation into wine spirits. 95% of the wine-growing area in the region is planted with the Ugni-blanc variety, from which is

10 — See Article 2(3)(i) of Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13), application of which has been extended, despite the repeal of Regulation No 1493/1999 laying down transitional measures pending the definitive measures implementing that regulation, by Regulation (EC) No 1608/2000 (OJ 2000 L 185, p. 24). Those provisions, adopted on 2 May 2002, should enter into force as from 1 January 2003.

11 — Established by decision of 27 March 1996 establishing an aid for the improvement of vine varieties, JORF (Official Journal of the French Republic) No 82 of 5 April 1996, p. 5280.

produced white wines which, on account of their particular individual properties, are intended for distillation into wine spirits. Apart from that exclusive outlet, the wines in question are put solely to low value use as white wines with no geographic indication or as the basis for the manufacture of sparkling wines. [12]

23. After examining that information, the Commission decided to initiate the formal investigation procedure pursuant to Article 88(2) EC, informing the French authorities thereof by letter of 15 October 1999. [13] It justified its decision to initiate the procedure by stating, essentially, that:

— as regards the planned planting of vine varieties and the overall amount per hectare, the aid complied with the criteria laid down in the context of the existing COM in wine, governed by Regulation No 822/87 (in particular, by Articles 3 and 5 of Regulation No 2741/89);

— however, the aid did not take into account the guidelines of the new COM established by Regulation No 1493/1999, in particular the objectives of preventing increased wine production and of adapting production to demand: on the one hand, it alleged that the planned reorientation of production would eventually result in a net growth in the quantity of 'vins de pays' offered on the market and, on the other, it could not be concluded from the data available that the market in 'vins de pays' would be capable of absorbing an increase in production;

— consequently, since France had not made any provision for measures to adapt the aid to the new requirements of the sector, in particular by combining the planned conversion with a substantial reduction in yields and in the area under production, there were doubts about the aid's compatibility with the common market.

24. The French authorities, in reply to the notice informing them that the procedure had been set in motion, submitted their own observations by letter of 13 December 1999 and, at the request of the Commission, provided additional information on 28 June 2000. However, meanwhile they had already granted the aid, initially for the 1998/1999 wine year and subsequently for the 1999/2000 wine year, by decrees of 12 March 1999 and 6 April 2000 respectively. [14]

12 — See the letter from the French authorities to the Commission of 28 July 1999 in Annex 1 to the Commission's counter-claim (in particular point 1).

13 — OJ 1999 C 359, p. 7.

14 — JORF No 85 of 1 April 1999, p. 5387, and No 97 of 23 April 2000, p. 260.

B — *The contested decision*

25. The formal investigation procedure was thus concluded with the adoption, on 20 September 2000, of the contested decision. In that decision, the Commission, taking into account the observations submitted by the French authorities, stated as follows.

26. First, in order to tackle the problem of production surpluses in Charentes, yields should be reduced not merely of the vineyards subject to the conversion planned by the French authorities, but also of those vineyards where Ugni-blanc vines remained planted for the production of cognac: those vines, which had produced a strong increase in yields, were in fact at the root of the surplus production in the region. For that reason, whilst acknowledging that, as confirmed by the French authorities, the conversion would produce a considerable reduction in the yields of the vineyards thereby affected, the Commission did not judge such reduction sufficient.

27. Second, as regards the reduction of the production areas, the fact that grubbing-up incentives were also to be granted in the regions affected by conversion, did not provide, according to the Commission, any guarantee that that would effectively amount to an area equal in size to that being converted since grubbing up was optional. However, even if that were the case, a reduction in the production area equal to that of the planned conversion, that is to say limited to 1 000 hectares, would not be sufficient in the region in question.

28. Third, the statement by the French authorities that the varietal conversion aid complied with the condition laid down by Article 11(2) of Regulation No 1493/1999, the purpose of which is the adaptation of production to market demand, did not stand up to scrutiny in light of the data in the Commission's possession concerning developments in the 'vins de pays' market. No definite conclusion could be drawn from the information available that the market would be capable of absorbing the new quantities of 'vins de pays' produced following conversion.

29. Thus, consideration of the observations submitted by the French authorities confirmed the conclusions which the Commission had arrived at when initiating the investigation procedure. The varietal conversion aid would produce a net increase in the production of wines offered on the normal wine market. That would distort competition in a market where the signs of expansion were not certain, thereby threatening to remove the problem existing in the region of Charentes to other markets or other regions of the Community. That would be contrary to the objectives of both the new COM established by Regulation

No 1493/1999 and to those of the previous COM established by Regulation No 822/87, which laid down the principle that production should not be increased. According to the Commission, only measures taken within the framework of the COM could guarantee that the global interests of operators in the wine sector were taken into account.

30. Thus, since the aid for varietal conversion does not satisfy the conditions laid down by the COM in wine, it cannot benefit from the derogation provided for in Article 87(3)(c) EC. For those reasons, the Commission declared the aid incompatible with the common market and, since the aid had already been granted, ordered recovery from the beneficiaries of the amounts they had already received.

31. The contested decision (No C (2000) 2754) was communicated to the French Government on 10 October 2000.

III — Legal analysis

32. The French Government raised a single plea in law, complaining that the Commission had made an error in law in interpreting and applying the provisions of the COM in wine, when it concluded that the aid in question did not satisfy the conditions laid down by the COM. In effect, it alleges that:

— the Commission was in error as to the applicable legislation by taking Regulation No 1493/1999 into account, whereas the compatibility of the aid should have been assessed solely on the basis of the preceding Regulation No 822/87;

— in any event, the Commission has infringed Regulation No 1493/1999 by making the compatibility of the aid dependent on reductions in production areas and yields in respect of which no provisions are laid down by the regulation;

— the Commission was mistaken in claiming that the aid did not comply with the criterion laid down by that regulation requiring the adaptation of production to demand;

— finally, the assessment of the impact of the aid on the wine market was mistaken and lacked an adequate statement of reasons.

A — *Preliminary considerations on the scope of the Court's jurisdiction over the contested decision*

33. Before examining the specific complaints raised by the French Government, I should comment on the preliminary question it raised concerning the scope of the Court's jurisdiction over a Commission decision which, as in the case of the contested decision, is concerned with State aid in a sector governed by a COM.

34. As is well known, the Court's settled case-law acknowledges that the Commission has wide discretionary powers to verify the compatibility of aid pursuant to Article 87(3) EC, in view of the complexity of the economic appraisals that the Commission is required to make in that respect. Thus, in such cases, the judicial review of the Commission's decisions is relatively limited since, again according to the Court's case-law, it is not for the Court to substitute its own economic appraisal in place of that carried out by the Commission. [15] Essentially, judicial review extends to the regularity of the procedure, the statement of reasons for the measure, the material accuracy of the facts under consideration and whether there has been any manifest error of assessment of such facts or a misuse of powers. [16]

35. However, the French Government underlines the particular nature of the case in question owing to the fact that the Commission is obliged to apply the provisions of the COM which — as we will soon see — prevail over the competition rules enshrined in the Treaty. It claims that those provisions place considerable restraints on the Commission's activity, thereby substantially reducing its discretionary power. Consequently, according to the French Government, in the present case the Court should exercise more assertive control over the Commission's action, assessing whether such action complies with the provisions of the COM.

36. The Commission does not deny that it is obliged, in carrying out its own appraisal, to respect the relevant provisions of the COM. Further, it points out that it is precisely for that reason that it could not approve aid which is incompatible with the provisions governing a COM or which would interfere with the proper functioning thereof. However, the fact remains that the contested decision concerns the compatibility of a State aid and not the application of the provisions governing the COM. Thus, it is that compatibility, and not the

15 — See the recent Court judgment of 7 March 2002, Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraphs 45 and 46, where further references are given.

16 — See, for example, in addition to Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 11, cited by the French Government, Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 25; in the same vein, but with reference to the ECSC Treaty, see order of the Court of 25 April 2002 in Case C-323/00 P *DSG* v *Commission* [2002] ECR I-3919, paragraph 43.

problems of interpretation of agricultural legislation referred to by the French Government, which is at the centre of the dispute and therefore it is over the appraisal carried out by the Commission in that respect that the Court should exercise its control.

37. For my part, I note at the outset that the first paragraph of Article 36 EC, in recognising the priority of the common agricultural policy with regard to the objectives of the Treaty in the field of competition, confers power on the Council to determine the extent to which such rules are applicable in the agricultural sector. [17] It follows that, in the context of a common organisation of agricultural markets, the application of Articles 87 to 89 EC depends on the provisions of the secondary law adopted by the Council for the purpose of setting up such organisation and is therefore, as stated in the case-law referred to by both France and the Commission, subordinate to those provisions. [18]

38. Further, I note that, according to the same case-law, in the agricultural sectors in which a COM has been established, the Member States must refrain from taking any action which may create exceptions to the provisions governing the organisation of that sector of the market or undermine its effectiveness, unless this is expressly provided for in those provisions. [19]

39. It follows, as the Commission itself correctly pointed out, that the Commission must exercise its discretionary power in the area specified by the provisions governing the relevant COM and therefore it cannot authorise State aid which is incompatible with a COM or which interferes with its proper functioning. It is, of course, for the Court to verify whether the Commission has infringed the provisions of the COM. However, within that specific legislative framework, the nature of the economic appraisal to be carried out by the Commission for the proposes of Article 87(3) EC does not change because, even within the context thus defined it remains an appraisal of the scope and effects of the aid. Consequently, there is no change in the Commission's discretionary power to carry out such appraisal nor in the corresponding limits of judicial review to which I referred earlier.

B — *On the alleged error regarding the legislation applicable in the present case*

40. Coming now to the specific complaints raised by the French Government, I note at the outset that in its action it contested the fact that the Commission, in assessing the aid, based itself on Regulation

17 — See Cases 139/79 *Maizena* v *Council* [1980] ECR 3393, paragraph 23 and C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraphs 60 to 61.

18 — Case 177/78 *Pigs and Bacon Commission* v *McCarren* [1979] ECR 2161, particularly paragraph 11.

19 — *Pigs and Bacon Commission* v *McCarren*, cited in the preceding footnote, paragraph 14.

No 1493/1999, applicable at the time when the contested decision was adopted, whereas the aid plan had been drawn up when the previous Regulation No 822/87 was in force, that being the regulation applicable to the notification procedure regarding the planned aid and which remained applicable during nearly the whole of the period that the aid was under investigation. However, in its reply to the Commission's objections that Regulation No 1493/1999 was still in force, albeit no longer applicable, when the investigation procedure was initiated and as such required to be taken into account in assessing the aid, the French Government did not maintain its complaint. [20]

41. However, the Commission objects that in its reply the French Government, in addition to altering its position regarding the application of Regulation No 1493/1999, also introduced new arguments based specifically on that regulation in support of its position. The Commission regards that as a change to the subject-matter of the dispute and therefore contests the admissibility of those arguments.

42. However, in my opinion that objection is unfounded because the French Government has merely withdrawn one of the arguments it raised against the contested decision; thus, the subject-matter of the dispute has not been expanded in breach of Article 42(2) of the Rules of Procedure. On the other hand, I note that it is settled case-law that the development of a plea already raised in the application, even though availing of arguments developed for the first time in the reply, does not constitute a 'new plea'. [21] It may easily be seen that, albeit in the alternative, the illegality of the contested decision on the grounds of the alleged infringement of Regulation No 1493/1999 had already been invoked by the French Government in the originating application [22] and the arguments adopted to that end in the reply represent the logical development of the said complaint in response to the defences presented by the Commission in its statement in defence. I therefore consider that the Commission's objection cannot be upheld.

C — *On the alleged infringement of Regulation No 1493/1999 regarding the reduction of production areas and yields*

43. As regards Regulation No 1493/1999, the French Government contends that the Commission infringed Article 11 of that regulation by finding the aid to be incom-

20 — Paragraph 4.2.1. (p. 6) of the French Government's reply.

21 — According to the classic distinction set out by the Court in Case 2/57 *Compagnie des Hauts Fourneaux de Chasse* v *High Authority* [1958] ECR 199, particularly p. 206. More recently, see Cases 257/86 *Commission* v *Italy* [1988] ECR 3249, paragraphs 14 and 15; C-301/97 *Netherlands* v *Council* [2001] ECR I-8853, paragraphs 166 to 169 and the Opinion delivered in that case by Advocate General Léger on 13 March 2001, paragraph 196; T-14/96 *BAI* v *Commission* [1999] ECR II-139, paragraph 165.

22 — Paragraph 8 et seq. (pp. 7 to 12) of the introductory proceedings.

patible on the ground that it was not accompanied by a sufficient reduction in production areas and yields. In its opinion, the relationship established by the Commission between the conversion of a given wine-growing area and the reduction of yields in other areas of non-converted land has no legal basis in the regulation. Further, according to the French Government, that regulation does not even impose, as the Commission appears to contend, any obligation to reduce the production areas (that is to say the grubbing-up of vines) in an area at least equivalent to that of the converted land. The French Government contends that Regulation No 1493/1999 regards the grubbing-up and conversion of vineyards as distinct and independent measures fulfilling different requirements. On the other hand, France is not entitled to distort the nature of the measures intended to encourage the grubbing-up of vines — which according to the regulation in question are optional — by making such measures mandatory and linking them to conversion.

44. The Commission replies by indicating that it did not intend to impose a reduction on yields or to establish a link between conversion and the reduction of the production areas or yields, but restricted itself to an appraisal of the negative impact of the aid on competition. According to the Commission, in the present case the aid would not encourage the conversion of vineyards from high yielding to lower yielding varieties, but rather the conversion of vineyards designated for the production of a spirit (cognac),[23] which as such does not come within the products governed by the COM in wine, towards vineyards designated for the production of normal 'vins de pays', included under the COM and intended to be released on the wine market. Thus, the aid would result in increased production of the latter wines, thereby having an effect on the market similar to that brought about by financing the planting of new vineyards, prohibited by Article 2 of Regulation No 1493/1999 and previously prohibited by Regulation No 822/87. The assessment of the aid as incompatible is therefore linked to the increased production of normal wines, which is contrary to the principles of the COM in wine. Consequently, the Commission considered whether the French authorities had provided for measures with a view to offsetting the negative effects of the aid, such as the reduction of yields and production areas throughout the Charentes region as a whole, which for some time had been producing a structural surplus, and not merely in the area being converted.

45. For my part, I would note at the outset that the contested aid cannot be considered a measure adopted in application of the restructuring and conversion system for vineyards established under Article 11 of Regulation No 1493/1999 in the context of measures for the management of produc-

23 — As the Commission has indicated, the term 'Cognac' is a geographical denomination for wine spirit, applied pursuant to Article 5(3) of Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks (OJ 1989 L 160, p. 1).

tion potential introduced by the COM. That system was brought into effect starting from the 2000/2001 wine year, and thus subsequent to the granting of the aid in question which, I reiterate, was made in the preceding 1998/1999 and 1999/2000 wine years. On the other hand, Article 11 did not lay down rules governing the granting of national aid for the restructuring and conversion of vineyards, but established a *Community* support system with the financing of which, in accordance with Article 13 of the regulation, Member States may not in principle compete. [24]

46. Thus, in my opinion it cannot be contended that the Commission erroneously applied Article 11 of Regulation No 1493/1999, making the conversion measures thereby provided for subject to conditions in relation to the reduction of production areas and yields not specified by that article. [25] The contested decision in no way asserts that Article 11 imposes an obligation to reduce production potential in the event of the conversion of a vineyard.

47. In reality, as is sufficiently clear from the text of the contested decision, the Commission referred to the need to reduce the production areas and yields in the context of its own appraisal of the impact of the disputed aid in the wine sector. [26] That is to say it called for a substantial reduction in production areas and yields in the region of Charentes not because such was required by Article 11 of Regulation No 1493/1999, but because it considered that the negative impact brought about in the wine sector by the implementation of the conversion measure could be offset by adopting appropriate measures, such as the abovementioned reduction. From that point of view, the Commission disregarded the arguments adduced by the French authorities during the investigatory procedure, considering as inadequate the reductions proposed by those authorities in connection with the planned conversion.

48. Thus, the reference to the reduction of production areas and yields constitutes an aspect of the Commission's appraisal of the aid's compatibility carried out in the exercise of the discretion which, as I have already stated, it possesses for that purpose. It should be noted that the French Government has not demonstrated, and in fact has not even indicated, that the Commission, in judging as insufficient the reductions of potential productivity indicated by the French authorities, has exceeded the limits of that discretion.

24 — The system in question effectively provides that the financial contribution to the measures for the restructuring and conversion of vineyards is to be funded by the Community (Article 13(2) and (3) of Regulation No 1493/1999), which is to make an annual financial allocation to the Member States on the basis of the specific measures to be taken in each Member State. Member States may be permitted to make a financial contribution solely in the form of a top-up to the Community funding where a Member State decides to restructure an area of vineyards more extensive than that originally planned (Article 14 of the regulation).

25 — Point 9, penultimate paragraph, and point 10 (pp. 8 and 9) of the introductory proceedings.

26 — See, in particular, paragraphs 36 to 40 and 49 of the contested decision.

49. I am therefore of the opinion that the present complaint should be rejected.

D — *On the alleged mistaken assessment as regards the adjustment of production to demand*

50. The French Government goes on to complain that the Commission made an error of assessment in doubting the capacity of the market to absorb the new quantities of 'vins de pays' produced subsequent to conversion. On the contrary, it contends that the aid would comply with the objective of adapting production to demand laid down by Article 11(2) of Regulation No 1493/1999. According to the French Government, the long-term development of the market in 'vins de pays', although characterised by price fluctuations, bears witness to a trend towards substantial growth. In view of that fact, and the fact that a vine becomes productive only several years after planting, it claims that the importance of the data taken into consideration by the Commission, according to which prices have been falling steadily in recent times, should be reassessed.

51. The Commission replies that the development of the market in 'vins de pays' in the period following the adoption of the contested decision confirms the steady fall in prices already noted in the decision itself. On the other hand, it claims that the stagnant situation, or indeed decline, in the market has extended to various wine years, as confirmed by the very information provided by the French Government. The Commission then contends that the wine market is currently undergoing a particularly difficult situation, as demonstrated by the fact that France and other Member States have requested the opening of the so-called crisis distillation measure provided for in Article 30 of Regulation No 1493/1999.

52. For my part, I would note at the outset that the information on the development of the market in 'vins de pays' supplied by the parties during the proceedings before the Court merely serves to confirm, in my opinion, point 46 of the contested decision, that is to say that the market 'does not show undisputed signs of expansion'. Notwithstanding the differing interpretations of the data in respect of preceding wine years, there does not appear to me to be any dispute between the parties that, at least since the 1999/2000 wine year, the market has suffered a decline in demand. [27]

53. A further indication of that is provided by the fact, as noted by the Commission, that following the adoption of the contested decision France and other Member States requested the opening of the so-called crisis distillation measure. Whilst

27 — See point 41 (pp. 12 and 13) of the Commission's defence and the third paragraph of point 11 of the application (p. 11) and point 3.3 (p. 4) of the French Government's reply. See also the table in Annex II to that reply.

that provision is concerned with table wine as a whole, thereby making it difficult to determine the extent to which it concerns the 'vins de pays' sector specifically, important indications regarding the overall development of the market may nevertheless be inferred from it. I note that crisis distillation is provided for under Article 30 of Regulation No 1493/1999 'in an exceptional case of market disturbance' with the precise objective of removing surplus wine products from the market into distillation. The manifest difficulties affecting the market can also be clearly deduced from the statements of reasons for the regulations employed to open the crisis distillation measure in France. [28]

54. However, the French Government contends that the full effect of the aid will be felt only three years after its implementation and therefore the market situation should be assessed bearing that in mind. Thus, the overall trend in the wine market should be extrapolated over the long term so that the current fall in prices, noted by the Commission in point 44 of the contested decision, cannot be a decisive aspect of its appraisal. However, in that respect I note that attaining the objective of adapting production to demand as set out in the abovementioned Article 11(2) of Regulation No 1493/1999 (but which, in response to the general objective of maintaining a balanced market, underpins several of the regulation's provisions) presupposes that, as regards the wine or wines concerned, existing production is effectively less than demand. [29] To date, the French Government has not taken any specific step to demonstrate, on the one hand, that growth is foreseeable in the short or medium term in the present market situation or, on the other, that such growth would make it possible to release new quantities of 'vins de pays' onto the market without disrupting it and indeed even require such new quantities to be released onto the market. However, the factors referred to in the preceding paragraph appear to me to point in precisely the opposite direction.

55. I therefore consider that the complaint in question should be rejected.

E — *On the distortion of competition*

56. If I have understood the arguments correctly, the French Government essentially makes three complaints against the contested decision in respect of the distortion of competition allegedly caused by

28 — See recitals 3 to 5 of Commission Regulation (EC) No 25/2001 of 5 January 2001 (OJ 2001 L 3, p. 11); recitals 3 to 6 of Commission Regulation (EC) No 1203/2001 of 19 June 2001 (OJ 2001 L 163, p. 11): I also note that the measure has been extended to the current 2001/2002 wine year by Commission Regulation (EC) No 347/2002 of 25 February 2002 (OJ 2002 L 55, p. 14).

29 — So, for example, Article 3(2) of the regulation provides that new planting rights may be granted (up to 31 July 2003) for the production of quality wine prs or a table wine described by means of a geographical indication 'where it has been recognised that... the production of the wine in question is far below demand'.

the contested aid. First, it contests the actual premiss on which the Commission bases its reasoning in assessing the compatibility of the aid, namely that the aid would lead to a net increase in the quantity of wine released on to the market, contrary to the principles of the COM in wine. [30] Second, the French Government contends that the Commission, by not taking into account the modest amount of the aid, has erroneously estimated its effects. Third, France complains that the contested decision does not provide a sufficient statement of reasons.

57. (a) The first complaint deals, in particular, with the distinction made by the Commission between wines intended for conversion into cognac, which therefore have an outlet outside the wine market, and wines which on the contrary are sold on the wine market. The French Government contends, on the one hand, that all wines, irrespective of their intended use, are governed by the COM and thus it is mistaken to regard, as the Commission does, wines intended for the production of cognac as wines 'outside the COM'. On the other hand, it refutes the claim that wines produced in Charentes from Ugni-blanc vines are used exclusively for that purpose.

58. However, those observations do not seem to me to be relevant. It is indeed true that, just like any other wine, wines intended for conversion into cognac are also governed by the COM in wine but, as the Commission correctly points out, cognac is not so governed since it does not come within the class of agricultural products within the meaning of Community law. Thus, for the purpose of assessing the effects of the conversion proposed by the French authorities, it is not a mistake to distinguish between the marketing of wine as such on the wine market, which is subject to the rules of the COM, and the conversion of wine into cognac, which is an outlet outside the COM, given that the latter product does not come within the COM. Consequently, it is in no way a mistake to consider that any quantity of wine produced for sale on the wine market rather than for conversion into cognac represents, within the framework of the COM, an *additional quantity* of wine and therefore is equivalent, in essence, to an increase in wine production.

59. On the other hand, the distinction made by the Commission is confirmed by the provisions of the COM itself. Article 28 of Regulation No 1493/1999, and Article 36(2) of the preceding Regulation No 822/87, provide that the production of wines traditionally used in the spirits sector produced in excess of the normal quantity intended for such use or otherwise

30 — See above, paragraph 44.

absorbed by the market are to be distilled. [31] That provision, which is incorporated within the framework of market mechanisms of the COM, is specifically intended to avoid disturbances in the wine market which could be caused by the release on to the market of wines, such as wines intended for consumption, which normally have a different outlet through conversion into spirits. [32]

60. Thus, the fact that the wines produced in Charentes, in addition to being converted into cognac, are also directed to other uses, being sold as table wines or used in the production of other wines, certainly does not preclude their conversion producing the effect indicated by the Commission of a net increase in the quantity of wine released on to the market. It is quite possible that a certain amount of converted wine may also involve vineyards whose product is directed towards something other than the production of cognac. However, where that is not the case, it is legitimate to maintain that conversion will have precisely the effect described. On the other hand, I must point out that the stated objective of the aid is specifically to limit the production of cognac, of which there is a surplus, by grubbing up Ugni-blanc vines. [33]

61. Thus, in my opinion the reasoning followed by the Commission in reaching the conclusion that that aid would essentially lead to a net increase in wine production is not mistaken.

62. (b) The French Government then contends that the Commission overestimated the effects of the aid in the wine-growing sector, without taking into consideration the modest amount of the aid involved and the fact that a relatively limited area would be affected by the conversion. [34]

63. Even if one sets aside the doubts about the admissibility of this complaint, of which there is in fact no trace in the application, I consider that the French Government's position on this point is also untenable. I note that one of the general

31 — Essentially it involves wine obtained from grapes which, like the Ugni-blanc variety concerned in the present dispute, are classified as both wine-grape varieties and varieties for other uses, namely for the production of wine spirits in the case in point. The production of such wines exceeding the so-called 'quantity of wine normally produced', determined in the various wine-growing areas on the basis of a production reference period, having regard to the quantities absorbed by conversion into spirits, must be delivered to distillation [see Articles 52 to 57 of Commission Regulation (EC) No 1623/2000 of 25 July 2000 concerning procedures for the application of Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms (OJ 2000 L 194, p. 45), amended by Regulation (EC) No 2464/2001 (OJ 2001 L 331, p. 25)].

32 — The objective of the mechanism in question can be clearly seen from the statements of reasons for Regulations Nos 1493/1999 and 1623/2000. The 37th recital of Regulation No 1493/1999 states that 'the production of wine obtained from grapes not classified solely as wine-grape varieties should be directed in the first instance towards traditional uses in the spirits sector and other traditional outlets; provisions should be made for the compulsory distillation of such wine produced in excess of the normal quantities directed towards such uses'. The 60th recital of Regulation No 1623/2000 then states that distillation '... plays a vital role in achieving balance on the market in table wine and indirectly helps to adjust wine-growing potential to requirements'.

33 — Point 5 of the contested decision. See also point 1 of the letter from the French authorities of 28 July 1999, cited above in footnote 12.

34 — See the third paragraph of point 5 (p. 9) of France's reply.

objectives of the existing COM in wine is to maintain the balance of the wine market in the Community. [35] It follows that any increase in wine production not justified by a specific market requirement should in principle be regarded as contrary to the objectives of the COM. Accordingly, as noted, in the contested decision the Commission considered that it was neither certain that the market in 'vins de pays' could absorb an increase in the production of such wines, nor that France had succeeded in demonstrating that the Commission had committed a mistake in making that assessment. I therefore consider that under the circumstances the Commission has not exceeded the limits of its discretionary power by taking the view that an aid such as that at issue, which increases the quantities of wine released on to the market, would alter the trading conditions to a degree contrary to the common interest within the meaning of Article 87(3)(c) EC, irrespective of whether the amount of aid was modest (but not insignificant) and the area concerned of limited size.

64. (c) Finally, as regards the French complaint concerning the alleged inadequacy of the statement of reasons for the contested decision, I must point out that the reasoning followed by the Commission with regard to the effects of the aid on competition was stated in unequivocal terms, albeit somewhat concisely, in points 45 and 46 of the contested decision. That said, however, I note that all the data employed by the Commission as the basis for making its assessment of the aid can be inferred from the decision as a whole. I therefore take the view that the statement of reasons for the contested decision satisfies the conditions established by case-law in the sense that France and any other parties that may be concerned were put in a position to understand why the Commission considered the contested aid unlawful and why the Court is empowered to exercise its power of review. [36] It follows that this complaint must also be rejected.

65. In conclusion, I consider that the action brought by the French Republic should be dismissed.

IV — Costs

66. By virtue of Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they are applied for. Since I consider that the action brought by the French Republic should be dismissed, I propose that France be ordered to pay the costs as requested by the Commission.

35 — See second and eleventh recitals of Regulation No 1993/1999.

36 — See, for example, Cases C-122/94 *Commission* v *Council* [1996] ECR I-881, paragraph 29; C-278/95 P *Siemens* v *Commission* [1997] ECR I-2507, paragraph 17; C-367/95 P *Commision* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63 and, most recently, *Italy* v *Commission* [2002] cited in footnote 15, paragraph 48.

V — Conclusion

67. In light of the above, I therefore propose that the Court give judgment as follows:

(1) The application is dismissed.

(2) The French Republic is ordered to pay the costs.