

Case C-86/20**Request for a preliminary ruling****Date lodged:**

18 February 2020

Referring court:

Krajský soud v Brně (Brno Regional Court, Czech Republic)

Date of the decision to refer:

14 January 2020

Applicant:

Vinařství U Kapličky s.r.o.

Defendant:

Czech Agriculture and Food Inspection Authority

ORDER

The Krajský soud v Brně (Regional Court in Brno) ruled [OMISSIS] in the case

of the Applicant: Vinařství U Kapličky s.r.o., [OMISSIS]

[OMISSIS]

against

the

Defendant:

Státní zemědělská a potravinářská inspekce, ústřední inspektorát (Czech Agriculture and Food Inspection Authority, Central Inspectorate)

[OMISSIS] Brno

concerning the action brought against the Defendant's decision of 4 August 2016 [OMISSIS]

as follows:

I. The following questions **are referred** to the Court of Justice of the European Union for a preliminary ruling:

- 1) Does a V I 1 document issued under Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector, and containing a certificate issued by an authorised body from a third country certifying that the product has been produced in accordance with oenological practices recommended and published by the OIV or approved by the Community constitute a mere administrative condition for the entry of wine into the territory of the European Union?
- 2) Does EU law preclude a national rule which allows a dealer of wine imported from Moldova to avoid liability for the administrative offence of marketing wine which has undergone oenological practices not allowed in the European Union, unless the national authorities refute the dealer's assumption that the wine was produced in accordance with oenological practices approved by the European Union, which the dealer made from the V I 1 document issued by the Moldovan authorities under Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector?

II. The proceedings **are stayed**. [Or.2]

Grounds:

I. Subject matter of the proceedings

1. Under a decision of the Czech Agriculture and Food Inspection Authority, Brno Inspectorate, of 14 January 2016 [OMISSIS] (‘the First Instance Decision’), the Applicant was found guilty of committing administrative offences under Paragraph 39(1)(ff) of Zákon č. 321/2004 Sb., o vinohradnictví a vinařství (Law No 321/2004 on viticulture and viniculture), in the version effective to 31 March 2017 (‘the Law on Viticulture and Viniculture’) and a fine of CZK 2 100 000 was imposed on the Applicant, as well as an obligation to reimburse laboratory analysis costs of CZK 86 420. The Applicant was found to have committed administrative offences by marketing wine originating from Moldova that had undergone unauthorised oenological practices, in breach of Article 80(2)(a) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (‘Regulation No 1308/2013’). In some cases, the Applicant also infringed Article 80(2)(c) of

Regulation No 1308/2013, under which these products are not to be marketed in the European Union if they do not comply with the rules laid down in Annex VIII, under which increases are permitted in alcoholic strength by volume not exceeding the limit of 3% volume. The Applicant contested the First Instance Decision in an appeal, which the Defendant dismissed in a decision of 4 August 2016 [OMISSIS] ('the Contested Decision'), confirming the First Instance Decision.

2. The Applicant brought an action against that decision, objecting, among other things, that the Defendant had not dealt adequately with the alleged 'liberation' (avoidance of liability for the above administrative offences). In the Applicant's opinion, the ground for liberation is that the wine was accompanied by V I 1 documents issued by the Moldovan authorities pursuant to Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector ('Regulation No 555/2008'). The Applicant thus had the wine checked indirectly by a State authority authorised by the European Union. Therefore, in the administrative procedure, the Applicant proposed that the V I 1 documents on the individual wines inspected be used as evidence.
3. The Defendant did not use the V I 1 documents as evidence in the administrative proceedings (and it did not even ask the Applicant for these documents) as it concluded that relying on V I 1 documents (without the Applicant having a laboratory analysis performed on a consignment of wine) would not be enough for avoiding liability for the administrative offences in question.
4. The Krajský soud v Brně (Regional Court in Brno), in a judgment of 26 April 2018 [OMISSIS], concluded that, in the case in hand, it could not, in principle, be ruled out that the Applicant avoided liability for administrative offences on the ground that it had relied on the V I 1 document. If an authorised body from a third country certifies in the V I 1 Document that a product has been produced in accordance with oenological practices approved by the European Union, the person marketing wine furnished with that document may rely on the veracity of such certification. The Krajský soud also put forward other circumstances that should be examined in order to determine whether the Applicant had in fact avoided its liability, and it concluded that the clear facts for such an assessment were missing from the administrative file. Consequently, it annulled the contested decision and referred the case back to the Defendant.
5. Following the Applicant's appeal on a point of law, the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), in a judgment of 16 August 2018 [OMISSIS], set aside the judgment of the Krajský soud v Brně of 26 April 2018 [OMISSIS], and referred the case back to that court for further consideration. It concluded that submission of the V I 1 document was not sufficient for liberation. As regards the nature of that document, the court

concluded that it was merely an administrative authorisation for the wine in question to enter the European Union. [Or. 3]

6. On the basis of this binding legal opinion, the Krajský soud subsequently dismissed the action in a judgment of 21 November 2018 [OMISSIS]. A second appeal on a point of law was also dismissed by the Nejvyšší správní soud (Supreme Administrative Court) in a judgment of 27 March 2019 [OMISSIS]. Following a constitutional complaint by the Applicant, those two judgments were set aside by the Ústavní soud (Constitutional Court, Czech Republic) in a judgment of 5 September 2019 [OMISSIS]. The Ústavní soud (Constitutional Court) found, principally, that there had been an infringement of the Applicant's right to a fair trial on the ground that the Nejvyšší správní soud had, as a matter of principle, contested the legal assessment of the Krajský soud as to the binding nature of the certificate in the V I 1 document as an instrument of EU law, since, according to the Ústavní soud, it was allowed to do so only after referring a question to the Court of Justice of the European Union for a preliminary ruling.

II. Relevant legal provisions

7. Central to the plea in law relating to the question referred for a preliminary ruling is the interpretation and application of the national provision on liberation (avoidance of objective liability for an administrative offence, that is, strict liability) which was largely resolved by the Ústavní soud (Constitutional Court) in the aforementioned judgment. This is a purely national provision which does not implement any rule of EU law. However, the findings of the Ústavní soud, which are binding on this court, are, to a certain extent, conditional on a correct answer to the question as to the nature of a V I 1 document issued under Regulation No 555/2008. While noting that the nature of the V I 1 document was significant for the proceedings, the Ústavní soud emphasised that it did not itself have jurisdiction to seek a correct application of EU law or to authoritatively interpret the contents of that law. EU law therefore plays a fundamental role in terms of whether the correct starting point for this court (as favoured by the Ústavní soud) is that a V I 1 document does not constitute a mere administrative condition for the entry of wine into the territory of the European Union. From that perspective, the provisions of Regulation No 555/2008 are key. As the present case concerns the avoidance of liability for an administrative offence which in fact consists of an infringement of Regulation No 1308/2013, the court also cites the relevant provisions of that regulation.

II. A. National law

8. Under Paragraph 39(1)(ff) of the Law on Viticulture and Viniculture, a legal person or a licensed entrepreneur, as a person producing or marketing a product, commits an administrative offence in failing to comply with obligations laid down by EU legislation on viticulture, viniculture or trading in goods.

9. Under Paragraph 40(1) of the Law on Viticulture and Viniculture, a legal person is not liable for an administrative offence if it proves that it took all efforts that could have been required to avoid the infringement.

III. B. EU law

10. Article 40 of Regulation No 555/2008 provides that: *‘The certificate and the analysis report referred to in Article 82(3)(a) and (b), respectively, of Regulation (EC) No 479/2008 shall form a single document:*

- (a) *the “certificate” part of which shall be made out by a body of the third country from which the products comes;*
- (b) *the “analysis report” part of which shall be made out by an official laboratory recognised by the third country from which the products comes.’*

11. Article 41 of Regulation No 555/2008 provides that: *‘The analysis report shall include the following information:*

- (a) *in the case of wines and grape must in fermentation:*

- (i) *total alcoholic strength by volume;*
- (ii) *the actual alcoholic strength by volume;*

- (b) *in the case of grape must and grape juice, the density;*

- (c) *in the case of wines, grape must and grape juice: [Or. 4]*

- (i) *the total dry extract;*
- (ii) *the total acidity;*
- (iii) *the volatile acid content;*
- (iv) *the citric acid content;*
- (v) *the total sulphur dioxide content;*
- (vi) *the presence of varieties obtained from interspecific crossings (direct producer hybrids or other varieties not belonging to the Vitis vinifera species).’*

12. Article 43(1) of Regulation No 555/2008 provides that: *‘The certificate and analysis report for each consignment intended for import into the Community shall be drawn up on a single V I I document.*

The document referred to in the first subparagraph shall be drawn up on a V I I form corresponding to the specimen shown in Annex IX. It shall be signed by an

officer of an official body and by an official of a recognised laboratory as referred to in Article 48.'

13. Article 48(1) of Regulation No 555/2008 provides that: *'The Commission shall draw up and update lists containing the names and addresses of the agencies and laboratories, and of the wine producers authorised to draw up V I 1 document, on the basis of notifications from the competent authorities of third countries.'*
14. Article 51 of Regulation No 555/2008 provides that: *'Where the competent authorities of a Member State suspect that a product originating in a third country does not comply with Article 82(1) and (2) of Regulation (EC) No 479/2008, they shall inform the Commission thereof without delay.'*
15. Annex IX to Regulation No 555/2008 contains a specimen form V I 1, point 9 of which includes the following text, where the relevant data is to be marked with a cross in the box: *'The product described above ⁽³⁾ is / is not intended for direct human consumption, complies with the Community definitions or categories of grapevine products and has been produced using oenological practices ⁽³⁾ recommended and published by the OIV/ authorised by the Community'*. The footnote ⁽³⁾ in the text provides an instruction to mark the relevant box with a cross. The abbreviation 'OIV' stands for the International Organisation of Vine and Wine.
16. Article 80(2) of Regulation No 1308/2013 provides that: *'Products listed in Part II of Annex VII shall not be marketed in the Union if:*
 - (a) *they have undergone unauthorised Union oenological practices;*
 - (b) *they have undergone unauthorised national oenological practices; or*
 - (c) *they do not comply with the rules laid down in Annex VIII.'*

III. Analysis of the questions referred for a preliminary ruling

17. As the court has already pointed out, the complaint which is the subject of the question referred for a preliminary ruling essentially concerns the interpretation and application of a national rule on avoidance of liability for administrative offences. The Ústavní soud gave a binding ruling on that question in the present case, subject, of course, to the proviso that it does not have jurisdiction to provide an authoritative interpretation of the content of EU law. The basis for the Ústavní soud's findings was the finding that a V I 1 document issued pursuant to Regulation No 555/2008 does not constitute a mere administrative condition for the entry of wine into the territory of the European Union. On that point, the Ústavní soud endorsed the legal opinion of this court in the judgment of 26 April 2018 [OMISSIS].

III. A. The nature of the V I 1 document

18. As regards the nature of the V I 1 document, this court intends to maintain its original legal opinion and to clarify it to some extent in light of the findings of the Ústavní soud.
19. In the view of this court, the V I 1 document cannot be reduced to a mere administrative formality for customs purposes, from which wine traders cannot assess anything in terms of the quality of an imported wine. Regulation No 555/2008 is thus based to a considerable extent on the confidence [Or. 5] of the European Union in certificates issued by approved bodies of third countries, in which these bodies confirm that a product was produced using oenological practices approved by the European Union (and, consequently, complying with OIV oenological practices).
20. It is not directly apparent from Regulation No 555/2008 that the European Union would perform an authorisation or otherwise approve the third country official bodies or laboratories that may issue V I 1 documents. Under the Regulation, the Commission merely lists the bodies which, according to the third country, are entitled to issue the document. The authorisation itself is performed by the third countries and not by the European Union. On the other hand, the Regulation cannot replace acts of public international law and therefore does not regulate, for example, relationships between third countries and the European Union. Consequently, the Regulation does not authorise a third country to notify a particular body if the European Union does not accept it under an act of public international law (even implicitly). At the very least, by including an authorised person of a third country on the list drawn up in accordance with Article 48 of Regulation No 555/2008, the European Union accepts that body as a body authorised to issue certificates which it will recognise.
21. The rules contained in Title Three of Regulation No 555/2008, and in particular the standardisation of documents accompanying wine products, are clearly intended to facilitate international trade in those products using an instrument typical of international trade (and of the fundamental principle of the free movement of goods, within the European Union), namely the recognition of certificates — in this case the recognition of a certificate issued by a third country in the context of the standardised V I 1 document.
22. Consequently, the Krajský soud (Regional Court) is not in doubt that the European Union itself, by means of the rules contained in Regulation No 555/2008 and by entering approved bodies on the list drawn up under Article 48 of the Regulation, demonstrates confidence in the certificates issued by those bodies and recognises those certificates from the outset. This confidence is understandably not boundless, and the Regulation itself provides for situations where it is found to have been abused (see, for example, Article 51). In such situations, the European Union can take steps to protect the EU market again using acts under public international law and it is therefore not burdened by any lengthy EU legislative process. It is therefore clear that the European Union may intervene in a relatively operational manner and, and where this has not happened,

it can be assumed that it continues to trust the bodies authorised by third countries and mentioned on the list under Article 48 of Regulation No 555/2008.

23. The Defendant provided, a posteriori, a series of documents intended to show that the administrative authorities of the Czech Republic had drawn the Commission's attention to the 'problematic nature' of wines imported from Moldova and that several bilateral discussions had taken place on this issue between the Czechs and the Moldovans. However, those documents first of all demonstrate activities undertaken by the Czech authorities only after the administrative offences in question had been committed. Even then, this does not call into question the fact that the European Union, as a whole, intends to continue trusting the certificates issued by the approved Moldovan body. Whether the Commission's failure to respond is deliberate or merely the result of a lack of communication with the Czech national authorities, the individual effort of the Czech national authorities to change the approach of the Moldovan body authorised to test exported wines and to issue certificates on V I 1 documents does not change anything in the nature of the V I 1 document. It should be noted that the specific extent of the alleged 'problematic nature' of wines imported from Moldova is not known to this court and was not elaborated in the administrative proceedings under review (in particular, no further grounds were established as to how much the applicant should have known about the problems).
24. On the basis of the foregoing, this court considers that Document V I 1 is not a mere administrative formality for customs purposes and that, for a wine dealer, the certificate appearing on that document may give the impression that the imported wine meets certain quality standards. [Or. 6]

III. B. Consequences for the application of national law

25. In the event that the Court of Justice of the European Union should agree with the above legal opinion, the Krajský soud considers it appropriate also to focus on the actual consequences of that legal opinion for subsequent application of the national law, in particular the rule on liberation contained in Paragraph 40(1) of the Law on Viticulture and Viniculture.
26. The first finding expressed on the basis of the above legal opinion by this court and subsequently by the Ústavní soud is the possibility of an operator avoiding liability for an administrative offence consisting of marketing a wine produced in breach of the oenological practices approved by the European Union by reference to a certificate contained in a V I 1 document. The obtaining of such a certificate may entail all efforts that might be required of an operator to avoid a breach of the obligation. Since the rules are based on the European Union's confidence in the veracity of the certificates issued by authorised bodies in third countries in the V I 1 document, it would be hard to justify making a general request to wine dealers furnished with V I 1 documents not to trust the certificates and to check their veracity. Asking these entities to perform further analyses (in the absence of reasonable doubt as to the veracity of a certificate) goes entirely against the sense

of the rules laid down under Title Three of Regulation No 555/2008. These rules would be entirely superfluous if entities trading in wine were required, on their own initiative, to provide another, substantively identical, certificate confirming fulfilment of the criteria required by the European Union as regards the quality of the wine.

27. If an authorised body from a third country certifies in a V I 1 document that a product has been produced in accordance with the oenological practices approved by the European Union (and, consequently, complying with OIV oenological practices), the wine dealer furnished with the document may rely on the veracity of that certificate. It is not important that the certificate itself fails to specify which specific analyses were carried out or with what results.
28. However, it should be stressed that the possibility of avoiding liability for administrative offences does not mean that wine dealers bearing a V I 1 document containing the appropriate certificate are automatically relieved of liability for administrative offences consisting of breaches of the oenological practices approved by the European Union. In order to determine whether it was enough for the purposes of avoidance of liability to rely on the contents of the V I 1 document in a particular case, all the circumstances of the case must be examined. On the basis of a V I 1 document, a wine dealer may, in general, legitimately consider that a wine satisfies the relevant qualitative criteria. Factors may, however, be found which refute such an assumption in a particular case or which make it impossible to identify the wine with the relevant V I 1 document.
29. Thus, since the European Union's confidence in the veracity of certificates is not without limits (see, for example, the possibility of using the procedure under Article 51 of Regulation No 555/2008, which relates to any subsequent action by the Commission towards authorised bodies in third countries), the confidence of the wine merchants in the veracity of the certificates cannot be without limits either. Relying on the certificates cannot therefore be regarded as making all efforts if the perpetrator of the administrative offence knew or objectively must have known that an imported wine did not, in all likelihood, meet the requirements for oenological practices.
30. As the Ústavní soud has pointed out, it must be determined in a specific case whether the checks are carried out directly at the wine importer's premises or at the reseller's premises, whether they are carried out immediately after importation of the wine or, on the contrary, with a larger delay, and also whether evidence has emerged calling into question the validity of the certificates on the V I 1 document. However, the burden of raising and presenting such evidence rests with the administrative body once the stage of imposing an administrative penalty is reached.
31. According to the Ústavní soud (Constitutional Court), it is also primarily for the administrative bodies to raise any doubts as to whether the wine being checked is indeed the wine for which the certificate was issued on the V I 1 document and

whether the wine was tampered with after the certificate was issued. If [Or. 7] these doubts are substantiated by specific findings of fact, the wine trader will have to refute the doubts, so that the wine can be identified with the relevant V I 1 document. Only then can a real basis be established for the trader's assumption that the wine's qualitative criteria related to the V I 1 document have been met.

32. In the present case, the Applicant failed to produce the specific V I 1 documents during the administrative procedure, but merely proposed evidence in the form of these documents. However, the administrative authority did not request those documents, taking the view that they were not required for a decision on the case. Although the questions referred may appear academic in light of that fact, their answer is essential to the Court's decision. If a V I 1 document was, in general terms, a mere administrative formality for imports of wine and dealers therefore could not make any assumptions from it as to the quality of the wine, there would have been no need to ask for specific V I 1 documents in the context of the administrative procedure in question. The consequence then is that the appeal is unfounded. However, if a V I 1 document is not a mere administrative formality, that would support the clear finding of the Ústavní soud (Constitutional Court) that possession of this document might result in liberation for the Applicant, and the administrative body therefore should have examined and evaluated the particular circumstances of the case to determine whether or not the Applicant actually avoided liability for the administrative offence. The consequence then is the withdrawal of the administrative decision on the understanding that these circumstances must be further examined and assessed by the administrative authority in a subsequent procedure.

III. C. Compatibility of the national rule on liberation with European Union law

33. Although this court has no doubts as to the compatibility with European Union law of the aforementioned consequences of applying national law, it has also asked a second question, mainly to prevent the question referred from being treated too narrowly due an incorrect definition of the extent to which the present case concerns an interpretation of EU law and the extent to which it concerns an interpretation of national law. Besides this, the possibility of liberation also indirectly affects implementation of the EU rules on oenological practices, in particular Article 80(2) of Regulation No 1308/2013. It is for that reason as well that the court considers it appropriate for the Court of Justice of the European Union to have an opportunity to rule not only on the actual nature of the V I 1 document, but also on the legal position taken by this court as a whole (and by the Ústavní soud) regarding the application of national law in a wider context.
34. As the question of how clearly a national rule is explained in the text of a Law is irrelevant from the perspective of EU law, the national court, for the purposes of the second question, formulates the specific national rule applicable to the present case, which is based on Paragraph 40(1) of the Law on Viticulture and Viniculture but is given concrete expression in the findings of the Ústavní soud in the present case. With regard to the nature of the decision-making activities of the Ústavní

soud, that national rule may be regarded as definitive and binding on all the courts in a given case. That national rule, the compatibility of which with EU law is questioned by this court, may be summarised as follows: A trader with wine imported from Moldova may avoid liability for an administrative offence consisting of marketing wine which has undergone oenological practices not allowed in the European Union, unless the national authorities refute the assumption that the wine was produced in accordance with oenological practices approved by the European Union, which it was able to make from the V I 1 document issued by the Moldovan authorities under Regulation No 555/2008.

35. As stated above, numerous constituent factual circumstances must be taken into account when applying that rule and, moreover, there are a number of exceptions to it. The second question therefore seeks, in essence, to ascertain whether the possibility of avoiding liability for administrative offences on the basis of those factors is excluded as a matter of principle under EU law and, therefore, whether other obstacles to the application of such a rule arise from EU law and must be examined by the national authorities. **[Or. 8]**
36. Since this court finds no obstacle to the application of the above national rule (if the Court of Justice finds that the V I 1 document is not a mere administrative formality for customs purposes), it does not consider it necessary to put forward any additional arguments in support of that conclusion.

IV. Conclusion

37. In the light of the foregoing, the Krajský soud v Brně refers the following questions to the Court of Justice of the European Union:
- (1) Does a V I 1 document issued under Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector, and containing a certificate issued by an authorised body from a third country certifying that the product has been produced in accordance with oenological practices recommended and published by the OIV or approved by the Community constitute a mere administrative condition for the entry of wine into the territory of the European Union?
 - (2) Does EU law preclude a national rule which allows a dealer of wine imported from Moldova to avoid liability for the administrative offence of marketing wine that has undergone oenological practices not allowed in the European Union, unless the national authorities refute the dealer's assumption that the wine was produced in accordance with oenological practices approved by the European Union, which the dealer made on the basis of the V I 1 document

issued by the Moldovan authorities under Commission Regulation (EC) No 555/2008 of 27 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 479/2008 on the common organisation of the market in wine as regards support programmes, trade with third countries, production potential and on controls in the wine sector?

38. [OMISSIS] [procedural step under national law]

[OMISSIS] [information on the remedies available]

Brno 14 January 2020

[OMISSIS] [signature]

WORKING DOCUMENT