ORDER OF THE COURT (Second Chamber)

12 June 2008 *

In Joined Cases C-23/07 and C-24/07,

REFERENCES for a preliminary ruling under Article 234 EC, by the Tribunale amministrativo regionale del Lazio (Italy), made by decisions of 4 December 2006, received at the Court on 25 January 2007, in the proceedings

Confcooperative Friuli Venezia Giulia (C-23/07),

Luigi Soini (C-23/07 and C-24/07),

Azienda Agricola Vivai Pinat Mario & Figlio (C-23/07),

Cantina Produttori Cormòns Soc. cons. arl (C-24/07)

v

Ministero delle Politiche agricole, alimentari e forestali,

* Language of the case: Italian.

Regione Friuli-Venezia Giulia,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans (Rapporteur), President of Chamber, K. Schiemann, J. Makarczyk, J.-C. Bonichot and C. Toader, Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

after informing the national court that the Court proposes to give its decision on Questions 1 to 5 by reasoned order in accordance with the second subparagraph of Article 104(3) of its Rules of Procedure,

after inviting the persons referred to in Article 23 of the Statute of the Court of Justice to submit observations in that regard,

the Court proposing to give its decision on Questions 6 and 7 by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

1 The references for a preliminary ruling relate, on the one hand, to the interpretation of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003, L 236, p. 33, 'the 2003 Act of Accession') and Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1) and, on the other hand, to the interpretation and the validity of Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Regulation No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (OJ 2002 L 118, p. 1), and Commission Regulation (EC) No 1429/2004 of 9 August 2004 amending Regulation No 753/2002 (OJ 2004 L 263, p. 11).

2 Those references were made in the context of disputes brought by Confcooperative Friuli Venezia Giulia, Luigi Soini and Azienda Agricola Vivai Pinat Mario & Figlio (Case C-23/07) and Cantina Produttori Cormòns Soc. cons. arl and Luigi Soini (Case C-24/07) (collectively, 'Confcooperative and Others') against the Ministero delle Politiche agricole, alimentari e forestali (Ministry of Agricultural, Food and Forestry Policy) and the Regione Friuli-Venezia Giulia ('the Friuli-Venezia Giulia Region') concerning the validity of the Ministerial Decree of 28 July 2006 amending the national register of vine varieties (GURI No 193 of 28 July 2006, p. 16, 'the Decree of 21 August 2006'), in so far as it adds the synonym 'Friulano' to the vine variety 'Tocai friulano B'.

Legal context

International law

The Vienna Convention on the Law of Treaties

3 Article 59(1) of the Vienna Convention on the Law of Treaties of 23 May 1969 ('the Vienna Convention') provides:

'A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject-matter and:

(a) it appears from the later treaty or is otherwise established that the parties intended that the matter should be governed by that treaty; or

(b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time.'

Law arising from the Agreement establishing the World Trade Organisation

4 The Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPs Agreement'), which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO), was signed in Marrakech on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1; 'the WTO Agreement').

5 Articles 22 to 24 of the TRIPs Agreement are in Section 3 — entitled 'Geographical Indications' — of Part II of that agreement, which is in turn entitled 'Standards concerning the Availability, Scope and Use of Intellectual Property Rights'.

6 Paragraph 1 of Article 22 of the TRIPS Agreement, which is entitled 'Protection of Geographical Indications', provides:

'Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin'.

7 Article 23 of the TRIPS Agreement, entitled 'Additional Protection for Geographical Indications for Wines and Spirits', provides:

‘1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question …

…

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication … Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

…’

8 Article 24 of the TRIPS Agreement, entitled ‘International Negotiations; Exceptions’, provides:

‘1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. …

…

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

…

6. … Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

…'

The EC-Hungary Agreement on wines

9 The Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, signed in Brussels on 29 November 1993, was concluded and approved on behalf of the Community by Council Decision 93/724/EC of 23 November 1993 (OJ 1993 L 337, p. 93; 'the EC-Hungary Agreement on wines'). It entered into force on 1 April 1994.

10 Article 2(2) of the EC-Hungary Agreement on wines provides:

'For the purposes of this Agreement, unless the contrary intention appears:

…

— "geographical indication" shall mean an indication, including an "Appellation of origin", which is recognised in the laws and regulations of a Contracting Party for the purpose of the description and presentation of a wine originating in the territory of a Contracting Party, or in a region or locality in that territory, where a given quality, reputation or other characteristic of the wine is essentially attributable to its geographical origin,

…'

11 Under Article 4 of the EC-Hungary Agreement on wines:

'1. The following names are protected:

(a) as regards wines originating in the Community:

…

— the geographical indications and traditional expressions referred to in the Annex;

(b) as regards wines originating in Hungary:

…

— the geographical indications and traditional expressions referred to in the Annex, as they appear in the Hungarian wine legislation, …

…

3. In the Community, the protected Hungarian names:

— are reserved exclusively to the wines originating in Hungary to which they apply,

and

— may not be used otherwise than under the conditions provided for by the laws and regulations of Hungary.

…'

12 In Part B ('Wines originating in the Republic of Hungary') of the Annex to the EC-Hungary Agreement on wines, which is entitled 'List of protected names for wines referred to in Article 4', the name 'Tokaj' is included in point 3.4 ('Wine-growing region Tokaj-Hegyalja') of Section I ('Geographical indications'). Part A ('Wines originating in the European Community') of that annex does not include either the designation 'Tocai friulano' or its synonym 'Tocai italico'.

13 The exchange of letters concerning Article 4 of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names (OJ 1993 L 337, p. 169), which is one of the acts referred to in the first paragraph of Article 1 of Decision 93/724, also entered into force on 1 April 1994.

14 After referring inter alia to Article 4(3) of the EC-Hungary Agreement on wines, the signatories of those letters confirm that:

'1. For a transitional period of thirteen years from the entry into force of that Agreement, the application of the latter will not preclude the lawful use of the name "Tocai" to designate and present certain Italian [quality wines produced in a specified region (quality wines psr)] under the following conditions.

Without prejudice to particular Community provisions and, where applicable, any more restrictive national provisions, the wine must be:

— obtained from the "Tocai friulano" vine variety;

— produced from grapes totally harvested in the Italian regions Veneto and Friuli;

— designated and presented solely by the name of the variety "Tocai friulano" or by its synonym "Tocai italico", the two words making up those names appearing together without any intervening words, in characters of the same type and size on a single line and separate from the name of the geographical unit in which the wine originates. In addition, the size of the characters used for those words may not exceed that of the characters giving the name of that geographical unit;

— marketed outside the territory of Hungary.

…

4. … the possibility of using the name "Tocai" in accordance with the conditions set out in point 1 will expire at the end of the transitional period referred to therein.

…'

2003 Act of Accession

15 Article 2 of the 2003 Act of Accession provides:

'From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the European Central Bank before accession shall be binding on the new Member States and shall apply in those States under the conditions laid down in those Treaties and in this Act.'

16 Under Article 20 of the 2003 Act of Accession:

'The Acts listed in Annex II to this Act shall be adapted as specified in that Annex.'

17 Article 24 of the 2003 Act of Accession provides:

'The measures listed in Annexes V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV to this Act shall apply in respect of the new Member States under the conditions laid down in those Annexes.'

18 In Section A of Chapter 5 of Annex X to the 2003 Act of Accession, entitled 'List referred to in Article 24 of the Act of Accession: Hungary', point 3 provides:

'32002 R 0753: … Regulation (EC) No 753/2002 …

By way of derogation from Annex II to Regulation (EC) No 753/2002, the use of the name "Rizlingszilváni"as a synonym for the variety "Müller Thurgau" shall be allowed until 31 December 2008 for wines produced in Hungary and exclusively marketed in Hungary.'

Community legislation

19 Article 19(1) of Regulation No 1493/1999 provides:

'Member States shall classify vine varieties for the production of wine. …'

20 Rules relating to the description, designation and presentation of certain wine sector products, and the protection of certain particulars and terms, are set out in Articles 47 to 53 of that regulation and in Annexes VII and VIII thereto.

21 Article 50 of Regulation No 1493/1999 states:

'1. Member States shall take all necessary measures to enable interested parties to prevent, on the terms set out in Articles 23 and 24 of the [TRIPs Agreement], the use in the Community of a geographical indication attached to the products referred to in Article 1(2)(b) for products not originating in the place indicated by the geographical indication in question …

2. For the purposes of this Article, "geographical indications" is taken to mean indications which identify a product as originating in the territory of a third country which is a member of the World Trade Organisation or in a region or locality within that territory, in cases where a certain quality, reputation or other given characteristic of the product may be attributed essentially to that geographical place of origin.

…'

22 Under Article 52(1) of Regulation No 1493/1999:

'…

Without prejudice to the Community provisions concerning specific types of quality wine psr, Member States may, in the case of certain conditions of production which they shall determine, authorise the name of a specified region to be accompanied by details relating to the method of manufacture or the type or by the name of a vine variety or a synonym thereof.

…'

23 Paragraphs 1 and 4 of point B of Annex VII to Regulation No 1493/1999 provide:

'1. The labelling of the products obtained in the Community may be supplemented by the following particulars, under conditions to be determined:

…

(b) in the case of table wines with geographical indication and quality wines psr [produced in specified regions]:

…

— the name of one or more vine varieties,

…

4. Member States of production may make certain particulars in paragraphs 1 and 2 compulsory, prohibit them or restrict their use in respect of wines produced in their territory.'

24 Article 53 of Regulation No 1493/1999 states:

'1. The detailed rules for the implementation of this Chapter and Annexes VII and VIII shall be adopted in accordance with the procedure laid down in Article 75. The rules shall govern in particular the derogations, conditions and authorisations provided for in those Annexes.

2. The following provisions shall be adopted in accordance with the procedure laid down in Article 75:

…

(e) the conditions for using the particulars referred to in paragraph 1 of point B of Annex VII …;

…'

25 Article 54(4) of Regulation No 1493/1999 provides:

'Member States shall forward to the Commission the list of quality wines psr which they have recognised, stating, for each of these quality wines psr, details of the national provisions governing the production and manufacture of those quality wines psr.'

26 Article 53 of Regulation No 1493/1999 and Annexes VII and VIII thereto were implemented by Regulation No 753/2002.

27 Article 19 of Regulation No 753/2002, headed 'Indication of vine variety', provides:

'1. The names of the vine varieties used for the production of a table wine with a geographical indication or a quality wine psr or their synonyms may be given on the label of the wine concerned provided that:

…

(c) the variety name or one of its synonyms does not include a geographical indication used to describe a quality wine psr, a table wine or an imported wine listed in the agreements concluded between the Community and third countries, and, where it is accompanied by another geographical term, is given on the label without that geographical term;

…

2. By way of derogation from paragraph 1(c):

(a) the variety name or one of its synonyms that includes a geographical indication may be shown on the label of a wine with that geographical indication;

(b) the variety names and their synonyms listed in Annex II may be used under the national and Community rules in force on the date of entry into force of this Regulation.

3. The Member States concerned shall notify the Commission, by 1 October 2002, of the measures referred to in point (b) of paragraph 2. The Commission shall take all appropriate steps to ensure that these measures are publicised.'

28 Annex II to Regulation No 753/2002, which is entitled 'List of vine varieties and their synonyms that include a geographical indication and that may appear on the labelling of wines in accordance with Article 19(2)' lists inter alia, in relation to Italy, the variety name 'Tocai friulano', together with its synonym, 'Tocai italico'. It is stated

in a related footnote that 'the name "Tocai friulano" and its synonym "Tocai italico" may be used during a transitional period until 31 March 2007'.

29 Annex II to Regulation No 753/2002 was not amended in that regard following the adoption of Regulation No 1429/2004, which adapted Regulation No 753/2002 following enlargement of the European Union and the accession, inter alia, of the Republic of Hungary to the Union.

30 With effect from 1 April 2007, the Commission — by Regulation (EC) No 382/2007 of 4 April 2007 amending Regulation No 753/2002 (OJ 2007 L 95, p. 12) — removed the variety name 'Tocai friulano' and its synonym 'Tocai italico' from Annex II and substituted the new name 'Friulano' for 'Tocai friulano' in that annex.

National legislation

31 Article 1(1) of the Decree of the Minister for Agricultural and Forestry Policy of 26 September 2002 laying down national conditions for the use, in derogation from Article 19(1)(c) of Regulation (EC) No 753/2002, of names of vine varieties and their synonyms including a geographical indication, listed in Annex II to that regulation, which may appear on the labelling of Italian [quality wines psr] and [typical geographical indications] (GURI No 247 of 21 October 2002, p. 3; 'the Decree of 26 September 2002') provides:

'The national conditions for the use, by way of derogation from Article 19(1)(c) of Regulation (EC) No 753/2002, of names of vine varieties and their synonyms including a geographical indication, listed in Annex II to that regulation, which

may appear on the labelling of Italian [quality wines psr] and of Italian wines with a typical geographical indication are laid down in Annex I which forms an integral part of this Decree, in which the names of vine varieties and their synonyms including a geographical indication which are mentioned in Annex II to Regulation (EC) No 753/2002 are listed. …'

32 Annex I to the Decree of 26 September 2002 mentions inter alia, under the heading 'Names of vine varieties or their synonyms', the name 'Tocai friulano' or 'Tocai italico', to which the following annotation, entitled 'Extent of the derogation (administrative territory and/or specific [quality wine psr] and/or [wines with typical geographical indication]') relates:

'For some [quality wines psr] of the [R]egions [of] Friuli-Venezia Giulia and Venezia for a transitional period ending on 31 March 2007 in accordance with the Agreement between the [European Union] and the Republic of Hungary.'

33 The sole article of the Decree of 28 July 2006 provides:

'The national register of vine varieties, as last amended by the Ministerial Decree of 30 March 2006 referred to in the preamble, is supplemented as follows: in Annex 1, Section I — wine-grape varieties — code 235 — variety "Tocai friulano B" — the synonym "Friulano" is added to the column concerned, with the following note: "intended exclusively to designate quality wines psr from grapes harvested in the [R]egion [of] Friuli-Venezia Giulia".'

The dispute in the main proceedings and the questions referred for a preliminary ruling

34 In its orders for reference, the national court states that, in support for their application for annulment of the Decree of 28 July 2006, Confcooperative and Others relied on the following pleas:

— error regarding the conditions for implementing the EC-Hungary Agreement on wines since, in Case C-347/03 *Regione autonoma Friuli-Venezia Giulia and ERSA* [2005] ECR I-3785, the Court confirmed the validity of that agreement but failed to take into account the Republic of Hungary's accession to the Union. The entry into force of the 2003 Act of Accession had the effect, under Article 59(1)(a) and (b) of the Vienna Convention, of invalidating the EC-Hungary Agreement on wines, because the latter, being an earlier treaty incompatible with the later treaty constituted by the 2003 Act of Accession, fell to be overridden;

— the lack of competence on the part of the Commission to abolish the right to use certain names of wines in the context of the application of Article 19 of Regulation No 753/2002;

— breach of the principle of non-discrimination laid down in the second subparagraph of Article 34(2) EC since discrimination against Italian producers in relation to Hungarian producers is unlawful, and the names used respectively by those groups are not likely to be confused;

— breach of the principle of proportionality since the seriousness of the consequences for Italian producers of the prohibition on using the name 'Tocai' after the expiry of the transitional period on 31 March 2007 is disproportionate in relation to the importance of the objective pursued by that prohibition;

— infringement of the right to respect for property provided for in Article 1 of the Additional Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, in that that right entails that a person may not be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by international law;

— breach of the principle of the primacy of international law laid down in the TRIPs Agreement, and in particular of the provisions laid down in that agreement regarding homonymy, including Article 24(6) of that agreement;

— breach of the principle of consistency in that application of the TRIPs Agreement to all the States which are parties to that agreement with the exception of the Italian State would lead to the abnormal consequence that the use of the name 'Tokay' for an Australian wine, even for sales of such wine in the Community, would be regarded as lawful by the Community, whereas use of the name 'Tocai friulano' is abolished for the Italian wines concerned.

35 The national court notes that in the preamble to the Decree of 28 July 2006 it is stated that under the derogation provided for in Article 19(2) of Regulation No 753/2002, use of the vine variety 'Tocai friulano' is permitted solely for the description and presentation of certain quality wines psr for a transitional period expiring on 31 March 2007, in accordance with the provisions laid down in the EC-Hungary Agreement on wines.

36 It adds that it is also stated in that preamble that after the expiry of that period such use will be prohibited since the term 'Tocai' is likely to give rise to confusion with the Hungarian designation of origin 'Tokaji', which remains for the exclusive use of Hungarian producers in accordance with the Community legislation concerning the protection of the geographical denominations of wine.

37 According to the national court, that measure was adopted also because the Friuli-Venezia Giulia Region had filed an application for entry in the national register of the vine variety 'Tocai friulano B', the synonym being 'Friulano B', which was identified by producers of the quality wines psr concerned as the only feasible alternative to the name 'Tocai friulano B', which may be used on the labels of such wines, since it enables a vine variety that is traditional and indigenous to that regional territory to be clearly identified.

38 The national court notes that it was for those reasons that the Decree of 28 July 2006 recognised, wholly by way of exception, the synonym 'Friulano B' for the vine variety 'Tocai friulano B' solely for the description and presentation of the quality wines psr concerned, pursuant to the derogation provided for in Article 19(2) of Regulation No 753/2002.

39 According to that court, it is therefore clear that the harm complained of in the case before it — that is to say, the harm caused by the prohibition on using the term 'Tocai friulano' or 'Tocai italico' after 31 March 2007 — flows directly from two acts of Community legislation, namely the EC-Hungary Agreement on wines, referred to in Decision 93/724, and Regulation No 753/2002.

40 The national court considers that serious doubts remain concerning the interpretation of those Community provisions since, in the earlier rulings of the Court of Justice on this matter, insufficient account was taken of the following circumstances:

— pursuant to Article 59(1)(a) and (b) of the Vienna Convention, the entry into force of the 2003 Act of Accession could have ended the EC-Hungary Agreement on wines, since the 2003 Act of Accession did not expressly reproduce those Community provisions;

— since those Community provisions were not taken over into the 2003 Act of Accession, reasonable doubt arises as regards the powers which the Commission arrogated to itself in order to impose a temporal limit on the use of the name 'Tocai friulano' on the basis of Article 19 of Regulation No 753/2002;

— since Regulation No 1429/2004 was adopted by the Commission after the Republic of Hungary's accession to the Union, the principle of non-discrimination set out in the second subparagraph of Article 34(2) EC may preclude that temporal limit;

— that temporal limit may involve infringement of Article 1 of the Additional Protocol to the European Convention on the Protection of Human Rights and Fundamental Freedoms; and

— lastly, a number of issues relating to the applicability of the TRIPs Agreement have not yet been considered.

41 In those circumstances, the Tribunale amministrativo regionale del Lazio, on the view that the outcome of the two cases before it hinges on the answers to certain questions of Community law, decided to stay the proceedings and to refer the following questions, framed in identical terms in each of the cases, to the Court of Justice for a preliminary ruling:

'(1) Is the Treaty of Accession … to be interpreted as meaning, with regard to the names of wines produced in Hungary and in the … Community, that, with effect from 1 May 2004, only the provisions of Community legislation referred to in Regulation No 1493/99 and Regulation No 753/2002, as amended by Regulation No 1429/2004, are applicable?

(2) Does Article 52 of Regulation No 1493/99 constitute an adequate legal basis on which the … Commission may abolish the use of the name of a wine (in the present case, 'Tocai friulano') which derives from a vine variety that is lawfully entered in the appropriate registers of the Italian State and is referred to in relevant Community regulations?

(3) Does the second subparagraph of Article 34(2) EC, which prohibits discrimination among producers and consumers of agricultural products within the … Community, prohibit discrimination against producers and users of just one wine name, namely that relating to the wine 'Tocai friulano', among the 122 names listed in Annex [II] to Regulation No 753/2002, as amended by Regulation No 1429/2004, in so far as it prohibits the continued use of that name after 31 March 2007?

(4) Is Article 19(2) of … Regulation No 753/2002, which provides authority for the use of the names of the vine varieties listed in Annex [II] to that regulation, as amended by Regulation No 1429/2004, to be interpreted as meaning that it is possible and lawfully permissible for there to be cases of homonymy among the names of vine varieties and geographical indications which refer to wines produced within the … Community?

(5) If the answer to the [Question 4] is in the affirmative, does the second subparagraph of Article 34(2) EC, which prohibits discrimination among producers and consumers of agricultural products within the … Community, preclude the Commission from applying in one of its own regulations (753/2002) the criterion of homonymy in a manner deriving from the application of Annex [II] to that regulation, to the effect, that is to say, of recognising the legality of the use of many names of vine varieties which include names that are wholly or partly homonymous with an equal number of geographical indications, whilst refusing to accept as lawful the use of just one name of vine variety ('Tocai friulano'), which has been lawfully used for centuries in the European market?

(6) Is Article 50 of Regulation No 1493/99 to be interpreted as meaning that, in implementing the provisions of Articles 23 and 24 of the TRIPs Agreement, and in particular the provision in Article 24(6) thereof, concerning homonymous names of wines, it is not possible for the Council of Ministers or the Member States (still less the European Commission) to adopt or approve measures such as Commission Regulation No 753/2002, which, with regard to homonymous names, afford different treatment to wine names having the same characteristics from the point of view of homonymy?

(7) Is the effect of the express reference to Articles 23 and 24 of the TRIPs Agreement in recital 56 in the preamble to and Article 50 of Regulation No 1493/99 to make the provision in Article 24(6) [of that agreement], which establishes the right of the States that are parties to that agreement to protect homonymous names, directly applicable within the Community legal order, in the light of the case-law of the Court of Justice?'

42 By order of the President of the Court of 26 March 2007, Cases C-23/07 and C-24/07 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

Admissibility

43 The Commission contends that the references for a preliminary ruling are inadmissible since they have no obvious bearing on the outcome of the main proceedings.

44 It maintains that, in seeking annulment of the Decree of 28 July 2006, Confcooperative and Others are seeking annulment of an act which does no more than introduce a new vine variety name, 'Friulano'.

45 Even if that decree were to be annulled, Italian producers would still not be able to use the names 'Tocai friulano' or 'Tocai italico' since the prohibition of such use, in force since 1 April 2007, is laid down in another decree, namely that of 26 September 2002.

46 According to the Commission, another reason why the references for a preliminary ruling are inadmissible is that the national court has not made clear how the interpretation requested of the Court is necessary in order to resolve the dispute in the main proceedings.

47 Those arguments cannot be upheld.

48 According to settled case-law, questions on the interpretation of Community law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of Community law that is sought is not related to the actual facts of the main action or to its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 22 and case-law cited).

49 In the present case, the question whether, in the event of annulment of the Decree of 28 July 2006, Italian producers would — as the Commission contends — still be

unable to use the names 'Tocai friulano' or 'Tocai italico' since even in that case the prohibition on such use, laid down in the Decree of 26 September 2002, would remain intact, requires an examination of Italian law, and in particular of the relationship between the two decrees in question, that being an examination which can be conducted only by the national court and not by the Court of Justice in the context of a reference for a preliminary ruling.

50 Moreover, as is clear from the preamble to the Decree of 28 July 2006, as referred to by the national court (paragraphs 35 to 38 of the present order), the introduction by that decree of the new vine variety designation stems from the fact that use of the names 'Tocai friulano' or 'Tocai italico' is prohibited with effect from 1 April 2007. These are therefore measures that appear to be inextricably linked.

51 It does not therefore appear, or at least it is not obvious, that the interpretation of Community law that is sought is unrelated to the actual facts of the main action or to its purpose.

52 In consequence, the presumption of relevance enjoyed by references for a preliminary ruling has not been rebutted by the evidence adduced by the Commission (see, inter alia, *van der Weerd and Others*, paragraphs 22 and 23).

53 The Court must therefore reply to the questions referred for a preliminary ruling.

Substance

54 Under Article 104(3) of the Rules of Procedure, inter alia where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or where the answer to the question admits of no reasonable doubt, the Court may give its decision by reasoned order.

Questions 1 to 5

55 Holding that the answer to Questions 1 to 5 admits of no reasonable doubt, the Court informed the national court that it proposes to give its decision by reasoned order in accordance with the second subparagraph of Article 104(3) of its Rules of Procedure and invited the interested parties referred to in Article 23 of the Statute of the Court of Justice to submit observations in that regard.

56 Confcooperative and Others, the Friuli-Venezia Giulia Region, the Italian and Hungarian Governments and the Commission replied to the Court's invitation. The Hungarian Government and the Commission stated in their replies that they had no objections to the Court's giving its decision by reasoned order. Confcooperative and Others, the Friuli-Venezia Giulia Region and the Italian Government essentially repeated the same arguments as had been raised in their written observations. The Friuli-Venezia Giulia Region requested that the Court arrange a hearing. However, those factors have not persuaded the Court to depart from the procedural approach proposed.

— Question 1

57 It is clear from the orders for reference that this question relates to the argument contended for by Confcooperative and Others, the Friuli-Venezia Giulia Region and the Italian Government that the 2003 Act of Accession put an end to the EC-Hungary Agreement on wines as regards the prohibition on use by the Italian producers concerned of the word 'Tocai' after the expiry of the transitional period on 31 March 2007.

58 They base that argument on the fact that the later treaty constituted by the 2003 Act of Accession does not lay down — at least not expressly — any such prohibition. Consequently, in accordance with Article 59 of the Vienna Convention, the sole act governing this matter is the 2003 Act of Accession, which falls to be regarded as a later treaty the provisions of which are incompatible with those of an earlier treaty. The 2003 Act of Accession does not lay down such a prohibition. Accordingly, the Italian and Hungarian names can coexist.

59 That argument cannot be upheld.

60 Although the prohibition on the use of the name 'Tocai' to describe and present certain Italian quality wines psr after the end of a transitional period expiring on 31 March 2007 was indeed first laid down in the EC-Hungary Agreement on wines, it was laid down again, before the 2003 Act of Accession entered into force, in Regulation No 753/2002.

61 Regulation No 753/2002, including that prohibition, is an integral part of the *acquis communautaire* pursuant to Article 2 of the 2003 Act of Accession.

62 Furthermore, that regulation is expressly referred to in point 3 of Section A of Chapter 5 of Annex X to that act.

63 Moreover, that provision lays down that, by way of derogation from Annex II to Regulation No 753/2002, use of the name 'Rizlingszilváni' as a synonym for the variety 'Müller Thurgau' is to be allowed until 31 December 2008 for wines produced in Hungary and exclusively marketed in Hungary.

64 The existence of that derogation confirms that the 2003 Act of Accession was by no means intended to undermine the continuity of the system provided for in Annex II to Regulation No 753/2002 as regards use of the names 'Tocai friulano' or 'Tocai italico'.

65 Following the accession of the Republic of Hungary to the Union, the 2003 Act of Accession incorporated, as part of the *acquis communautaire*, the prohibition laid down in Regulation No 753/2002 on use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period.

66 The continuity of that prohibition was subsequently confirmed by Regulations Nos 1429/2004 and 382/2007.

67 That is appropriately summarised in the fifth recital in the preamble to Regulation No 382/2007, which states:

'The name "Tokaj" designates a "quality wine produced in a specified region" originating in a cross border region of Hungary and Slovakia and is also part of the Italian and French vine variety designations: "Tocai italico", "Tocai friulano" and "Tokay Pinot gris". The co-existence of these three vine variety designations and the geographical indication is limited in time, until 31 March 2007 and results from the [EC-Hungary Agreement on wines], which has become part of the *acquis* since 1 May 2004. As from 1 April 2007, these three vine varieties designations are removed from

Annex II of Regulation (EC) No 753/2002, and as far as the vine variety designation "Tocai friulano" is concerned, it is now replaced by the new vine variety designation "Friulano"'.

68 The answer to Question 1 must therefore be that the 2003 Act of Accession is to be interpreted as meaning that, in accordance with Article 2 of that act, in so far as the provisions laid down in Regulation No 753/2002 prohibit use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period, they form an integral part of the *acquis communautaire* as it stood on 1 May 2004 and, after being reproduced in Regulation No 1429/2004, they have continued to apply after that date.

— Question 2

69 By Question 2, the national court asks the Court whether the Commission could lawfully rely on Article 52 of Regulation No 1493/1999 as a legal basis for abolishing the vine variety designation 'Tocai friulano'.

70 According to the national court, it is permissible to have doubts as to whether the Commission had the power to decide on such abolition, since no provision was made in the 2003 Act of Accession for the abolition of that designation.

71 As has already been stated in paragraph 68 of the present order, in that regard the 2003 Act of Accession must be interpreted as meaning that, in accordance with Article 2 of that act, in so far as the provisions laid down in Regulation No 753/2002 prohibit use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period, they must be regarded

as forming an integral part of the *acquis communautaire* as it stood on 1 May 2004 and, after being reproduced in Regulation No 1429/2004, they have continued to apply after that date.

72 It follows that the 2003 Act of Accession does not permit doubt to be cast on the Commission's power to adopt those provisions of Regulation No 753/2002.

73 On the contrary, in the present case the Commission's power is *a fortiori* not open to challenge because, in adopting the provisions of Regulations Nos 753/2002 and 1429/2004 concerning the prohibition on use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period, the Commission merely set out a series of enacting terms already contained in a bilateral agreement, namely the EC-Hungary Agreement on wines, which were later, as *acquis communautaire*, reproduced in the 2003 Act of Accession.

74 That is confirmed by the wording of Article 19(2)(b) of Regulation No 753/2002, which provides that the vine variety names listed in Annex II to that regulation — the annex containing the prohibition — may be used 'under the national and Community rules in force on the date of entry into force of this Regulation'.

75 Moreover, it is clear from the citations at the beginning of the preamble to Regulations Nos 753/2002 and 1429/2004 that the legal basis for those measures was not Article 52 of Regulation No 1493/1999, but Article 53 of Regulation No 1493/1999.

76 Under Article 53(1) of Regulation No 1493/1999, the detailed rules for the implementation of the chapter containing that Article, entitled 'Description, designation, presentation and protection of certain products', are to be adopted in accordance with the procedure laid down in Article 75 of Regulation No 1493/1999 — that is to say, in accordance with the comitology procedure known as the 'management'

procedure — and govern in particular the derogations, conditions and authorisations provided for in Annexes VII and VIII to that regulation.

77 Under Article 53(2)(e) of Regulation No 1493/1999, the management procedure is to be used for provisions laying down the conditions for using the particulars referred to in paragraph 1 of point B of Annex VII to that regulation, and the circumstances for using the particulars referred to in paragraph 3 of point B of Annex VII to that regulation.

78 Paragraph 1(b) of point B of Annexe VII to Regulation No 1493/1999 states specifically that the labelling of the products obtained in the Community may, in the case of table wines with geographical indication and quality wines psr, be supplemented, inter alia, by the name of one or more vine varieties, under conditions to be determined.

79 In the light of the foregoing, the answer to Question 2 must be that Article 53 of Regulation No 1493/1999 constitutes an adequate legal basis for the adoption by the Commission of the provisions laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period.

— Question 3

80 As regards the allegation that the second subparagraph of Article 34(2) EC is infringed by the provisions laid down in Regulations Nos 753/2002 and 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional

period, the national court asks the Court of Justice whether those provisions should not be regarded as discriminatory in that, of the 122 names listed in Annex II to Regulation No 753/2002, they concern the name of just one Italian vine variety: 'Tocai friulano'.

81 It should be noted at the outset that such measures — also originating in the EC-Hungary Agreement on wines — namely, the prohibition on the use of a vine variety designation at the end of a 13-year transitional period expiring on 31 March 2007, apply to the name of the French vine variety, 'Tokay Pinot gris'.

82 As regards vine variety designations similar to the Hungarian geographical indication 'Tokaji' or 'Tokaj', it is therefore common ground that comparable situations are treated strictly in the same way.

83 So far as the position outside the Community is concerned, it may also be noted that the Agreement between the European Community and the United States of America on trade in wine, concluded on behalf of the Community by Council Decision 2006/232/EC of 20 December 2005 (OJ 2006 L 87, p. 1), also does not permit the addition of such vine variety designations to the labelling of wines originating in the United States which are imported into the Community; nor does it provide for a transitional period in that regard.

84 The source of the provisions of Regulations Nos 753/2002 and 1429/2004 which are at issue in the cases before the referring court is a bilateral agreement. As the Commission points out, similar measures are typically to be found in a series of bilateral agreements on trade in wine concluded by the Community with third States. Those are measures which are introduced gradually in order to resolve the difficulties concerning the designation of wines which arise in connection with trade in those products.

85 In their written observations, Confcooperative and Others, the Friuli-Venezia Giulia Region and the Italian Government submit that the provisions of Regulations Nos 753/2002 and 1429/2004 which are at issue in the cases before the referring court give unwarranted priority to the Hungarian name 'Tokaj' to the detriment of the Italian designations 'Tocai friulano' and 'Tocai italico', which are thereby discriminated against.

86 In that regard, it should be noted, as the Court emphasised in paragraphs 88 to 97 and 108 of *Regione autonoma Friuli-Venezia Giulia and ERSA*, that those two designations are not in a comparable situation.

87 It is common ground that the Italian designations 'Tocai friulano' and 'Tocai italico' relate to the name of a vine or vine variety whereas the Hungarian name 'Tokaj' is a geographical indication.

88 That fact marks a decisive difference between the situation under consideration in the present case and the situation which fell to be examined in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraphs 28, 33 and 34, to which the Italian Government refers.

89 Moreover, the priority given to the geographical indication over the vine variety name which resembles it is consistent with the provision made overall by Article 19 of Regulation No 753/2002 and with the general scheme of that article.

90 Under Article 19(1)(c) of Regulation No 753/2002, the variety name may not appear on the label of a wine if it includes a geographical indication used to describe a quality wine psr. The prohibition on the use of such a name is therefore the general rule.

91 Under Article 19(2)(b) of that regulation, it is only 'by way of derogation' from that general rule that the use of such a name is permitted and then only under the national and Community rules in force on the date of entry into force of Regulation No 753/2002.

92 In the light of the foregoing, the answer to Question 3 must be that the second subparagraph of Article 34(2) EC does not preclude the provisions laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period.

— Question 4

93 By Question 4, the national court asks whether Article 19(2) of Regulation No 753/2002, under which it is lawful to use the designations of the vine varieties listed in Annex II thereto, is to be interpreted as meaning that cases of homonymy among vine variety designations and geographical indications for wines produced within the Community fall to be regarded as possible and lawfully permissible.

94 In that regard, it is clear from paragraphs 87 to 89 of the present order that, under Article 19(1)(c) of Regulation No 753/2002, the variety name may not, as a general rule, appear on the label of a wine if it includes a geographical indication used to describe a quality wine psr and that it is only by way of derogation from that general rule that Article 19(2)(b) provides that such a name may be used, and then only under the national and Community rules in force on the date of entry into force of that regulation.

95 The answer to Question 4 must therefore be that Article 19(2) of Regulation No 753/2002 must be interpreted as not precluding the provisions laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period.

96 Since Question 5 arises only if the answer to Question 4 is in the affirmative, there is no need to answer it.

Questions 6 and 7

— Question 6

97 By Question 6, the national court asks in essence whether Article 50 of Regulation No 1493/1999 must be interpreted as meaning that, in implementing the Articles 23 and 24 of the TRIPs Agreement, and in particular Article 24(6) of that agreement, concerning homonymous names of wines, measures such as those provided for under Regulation No 753/2002 may not be adopted since, in the case of homonymous names, they provide for wine names which have the same characteristics from the point of view of homonymy to be treated differently.

98 The reply to that question may be clearly inferred from the case-law of the Court.

99 As the Court emphasised in paragraphs 88 to 97 and 108 of *Regione autonoma Friuli-Venezia Giulia and ERSA*, the Italian designations 'Tocai friulano' and 'Tocai italico' relate to the name of a vine or vine variety and, unlike the Hungarian names 'Tokaj' or 'Tokaji', those Italian designations are not geographical indications.

100 In paragraph 115 of *Regione autonoma Friuli-Venezia Giulia and ERSA*, the Court held that Articles 22 to 24 of the TRIPs Agreement are to be interpreted as meaning that, in a case such as the case then before the referring court, which concerned homonymy between a geographical indication of a third State and a designation including the name of a vine variety used for the description and presentation of certain Community wines made from it, those provisions do not require that that designation may continue to be used in the future notwithstanding the twofold circumstance that it has been used in the past by the producers concerned either in good faith or for at least 10 years prior to 15 April 1994 and that it clearly identifies the State, region or area of origin of the protected wine in such a way as not to mislead the consumer.

101 As regards, in particular, Article 24(6) of the TRIPs Agreement, the Court also held, in paragraph 113 of *Regione autonoma Friuli-Venezia Giulia and ERSA* that that provision permits inter alia the Community, as a Member of the WTO, to apply the provisions of that agreement in respect of a geographical indication of any other Member of the WTO with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of a Member State as of the date of entry into force of the WTO Agreement.

102 The Court concluded in paragraph 114 of that judgment that Article 24(6) of the TRIPs Agreement, like Article 24(4) of that agreement, establishes a right and not an obligation for the Community to grant protection to a Community grape or vine variety, in particular if that variety is the homonym of a geographical indication relating to a wine originating in a third State.

103 It follows that the answer to Question 6 must be that Article 50 of Regulation No 1493/1999 must be interpreted as meaning that, in implementing Articles 23 and 24 of the TRIPs Agreement, and in particular Article 24(6) of that agreement, those provisions do not preclude the adoption of measures such as those laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period.

104 In the light of that answer, there is no need to answer Question 7 since that question, concerning the possible direct effect of Articles 22 to 24 of the TRIPs Agreement, is relevant only if Regulation No 753/2002, in so far as it prohibits use of the term 'Tocai' to describe and present certain Italian quality wines psr after the expiry on 31 March 2007 of a transitional period, is likely to be incompatible with those provisions of the TRIPs Agreement since they require that, in the event of homonymy, each of those names should continue to be used in the future.

105 It follows from the answer given to Question 6, and in particular from paragraph 102 of the present order, that that situation does not arise in the cases before the referring court, which concern enacting terms laid down in the EC-Hungary Agreement on wines and reproduced in Regulation No 753/2002, which were intended to regulate a situation where there is homonymy between a Hungarian geographical indication and an Italian designation including the name of a vine variety used for the description and presentation of certain Community wines.

Costs

106 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that

court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **The Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded must be interpreted as meaning that, in accordance with Article 2 of that act, in so far as the provisions laid down in Commission Regulation (EC) No 753/2002 of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products prohibit use of the term 'Tocai' to describe and present certain Italian quality wines, produced in a specified region, after the expiry on 31 March 2007 of a transitional period, they form an integral part of the *acquis communautaire* as it stood on 1 May 2004 and, after being reproduced in Commission Regulation (EC) No 1429/2004 of 9 August 2004 amending Regulation No 753/2002, they have continued to apply after that date.**

2. **Article 53 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine constitutes an adequate legal basis for the adoption by the Commission of the European Communities of the provisions laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines, produced in a specified region, after the expiry on 31 March 2007 of a transitional period.**

3. **The second subparagraph of Article 34(2) EC does not preclude the provisions laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines, produced in a specified region, after the expiry on 31 March 2007 of a transitional period.**

4. **Article 19(2) of Regulation No 753/2002 must be interpreted as not precluding the provisions laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines, produced in a specified region, after the expiry on 31 March 2007 of a transitional period.**

5. **Article 50 of Regulation No 1493/1999 must be interpreted as meaning that, for the purposes of implementing Articles 23 and 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakech on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) and, in particular, Article 24(6) of that agreement, those provisions do not preclude the adoption of measures such as those laid down in Regulation No 753/2002 and reproduced in Regulation No 1429/2004, the effect of which is to prohibit use of the term 'Tocai' to describe and present certain Italian quality wines, produced in a specified region, after the expiry on 31 March 2007 of a transitional period.**

[Signatures]