ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

12 March 2007 *

In Case T-417/04,

Regione autonoma Friuli-Venezia Giulia, represented by E. Bevilacqua and F. Capelli, lawyers,

applicant,

v

Commission of the European Communities, represented by L. Visaggio and E. Righini, acting as Agents,

defendant,

supported by

Republic of Hungary, represented by P. Gottfried, acting as Agent,

* Language of the case: Italian.

APPLICATION for the annulment of the provision limiting to 31 March 2007 the right to use the name 'Tocai friulano' contained in an explanatory note to item 103 in Annex I to Commission Regulation (EC) No 1429/2004 of 9 August 2004 amending Regulation (EC) No 753/2002 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 (OJ 2004 L 263, p. 11),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of H. Legal, President, V. Vadapalas and N. Wahl, Judges,

Registrar: E. Coulon,

makes the following

Order

Legal framework

1 Article 19 of 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, hereinafter referred to as 'the basic regulation'), in effect from 1 August 2000, provides that 'Member States shall classify vine varieties for the production of wine' and that in

their classification, they 'shall indicate the vine varieties suitable for the production of each of the quality wines [produced in a specified region] produced in their territory'.

2 Articles 47 to 53 of and Annexes VII and VIII to the basic regulation lay down the Community rules applicable to the description, designation, presentation and protection of certain wine sector products.

3 Article 47(1) of the basic regulation provides as follows:

'Rules relating to the description, designation and presentation of certain products covered by this Regulation, and the protection of certain particulars and terms are set out in this Chapter and in Annexes VII and VIII ...'

4 According to Article 50 of the basic regulation:

'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 Agreement on Trade-Related Aspects of Intellectual Property Rights, 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, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

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.

...'

5 According to Article 52(1) of the basic regulation:

'1. If a Member State uses the name of a specified region to designate a quality wine [produced in a specified region] or, where appropriate, a wine intended for processing into such a quality wine [produced in a specified region], that name may not be used to designate products of the wine sector not produced in that region and/or products not designated by the name in accordance with the provisions of the relevant Community and national rules. ...

Without prejudice to the Community provisions concerning specific types of quality wine [produced in a specified region], 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 ...'

6 Annex VII(B)(1) to the basic regulation sets out the optional particulars which may appear on the labelling of wines. It provides that:

'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 [produced in a specified region]:

...

— the name of one or more vine varieties ...'

7 Annex VII(G)(3) to the basic regulation provides that:

'Each Member State shall be responsible for the control and protection of quality wines [produced in a specified region] and table wines with geographical indication marketed in accordance with this Regulation.'

8 The basic regulation was implemented by 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 (OJ 2002 L 118, p. 1). Regulation No 753/2002 has been in force since 1 August 2003.

9 Article 19 of Regulation No 753/2002, entitled 'Indication of vine variety', provides as follows:

'1. The names of the vine varieties used for the production of a table wine with a geographical indication or a quality wine [produced in a specified region] 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 [produced in a specified region], 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. ...'

10 Annex II to Regulation No 753/2002, headed '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)', includes, in regard to Italy, the name 'Tocai Friulano, Tocai italico'. According to a footnote, '[t]he name Tocai friulano and its synonym Tocai italico may be used during a transitional period until 31 March 2007'.

11 Regulation No 753/2002 was subsequently amended, following the accession of ten new Member States to the European Union, including the Republic of Hungary, on 1 May 2004, by Commission Regulation (EC) No 1429/2004 of 9 August 2004 amending Regulation (EC) No 753/2002 (OJ 2004 L 263, p. 11, hereinafter referred to as 'the contested regulation'). The contested regulation has been in force since 1 May 2004.

12 Article 19 of Regulation No 753/2002, cited above, was not amended. Annex II of the regulation was also not substantially amended in regard to the name 'Tocai friulano, Tocai italico'.

13 It appears from that annex, as amended in accordance with Annex I to the contested regulation, that among the vine varieties or synonyms thereof listed therein in regard to Italy are the names 'Tocai friulano' in item 103 and 'Tocai italico' in item 104. It is indicated in a note that '[t]he name "Tocai friulano" may be used exclusively for quality wines [produced in a specified region] originating in the regions of Veneto and Friuli during a transitional period until 31 March 2007'. It is also indicated in a note that '[t]he synonym "Tocai italico" may be used exclusively for quality wines [produced in a specified region] originating in the regions of Veneto and Friuli during a transitional period until 31 March 2007'.

14 A similar provision, accompanied by the same transitional measure, appears in item 105 of Annex I concerning, in regard to France, the variety name tokay pinot gris in regard to which it is also provided in a note that '[t]he synonym "Tokay Pinot gris" may be used exclusively for quality wines produced in a specified region] originating in the departments of Bas-Rhin and Haut-Rhin during a transitional period until 31 March 2007'.

15 It can be seen from the whole of Annex I to the contested regulation that such a provision prohibiting the use of certain variety names or their synonyms beyond 31 March 2007 has been laid down only in respect of the abovementioned three names.

Procedure and forms of order sought

16 By application lodged at the Registry of the Court of First Instance on 15 October 2004, the Regione Autonoma Friuli-Venezia Giulia brought the present action.

17 By separate document lodged at the Registry of the Court on 27 January 2005, the Commission brought an application for a decision on admissibility under Article 114 of the Rules of Procedure of the Court.

18 By order of 21 February 2005, the President of the Fourth Chamber of the Court of First Instance granted the request of the Republic of Hungary for leave to intervene in support of the forms of order sought by the Commission.

19 The applicant submitted its observations on the objection of inadmissibility on 30 March 2005.

20 The Republic of Hungary lodged its statement in intervention on 13 April 2005.

21 The Commission and the applicant submitted their observations on the statement in intervention of the Republic of Hungary on 24 and 29 June 2005 respectively.

22 In its application, the Regione autonoma Friuli-Venezia Giulia claims that the Court should:

— declare the application admissible;

— annul the explanatory note attached to item no 103 in Annex I to the contested regulation concerning the limitation in time on the use of the name 'Tocai friulano' up to 31 March 2007;

— order the Commission to pay the costs.

23 In its plea of inadmissibility, the Commission contends that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

24 In its statement in intervention, the Republic of Hungary claims that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

Law

25 Under Article 114(1) of the Rules of Procedure, the Court may, if a party so requests, rule on the question of admissibility without considering the merits of the case. Under Article 114(3), the remainder of the proceedings is to be oral unless the Court decides otherwise. In the present case, the Court considers that the information in the documents before it is sufficient for there to be no need to open the oral procedure.

Arguments of the parties

26 The Commission maintains that the contested regulation is not of individual concern to the Regione autonoma Friuli-Venezia Giulia within the meaning of the fourth paragraph of Article 230 EC.

27 It contends that that regulation and, in particular, item 103 in Annex I, contains rules of a general and abstract nature which apply to all traders whose business is the making or marketing of wine, that is to say, persons considered in a general and abstract way, and that it is therefore of a general legislative nature.

28 The Commission states that even if it is established that the applicant is itself a producer of 'Tocai friulano' wine, that would not be sufficient for it to be regarded as individually concerned by the contested regulation. The fact that a legislative measure may have specific effects which differ according to the various persons to

whom it applies is not such as to differentiate them in relation to all the other operators concerned, where that measure is applied on the basis of an objectively determined situation.

29 The Commission contends that although the applicant argues that the name 'Tocai friulano' fulfils the function of a collective trade mark, it cannot claim to be the legal owner of that alleged mark. The case which gave rise to the judgment of the Court of Justice of 18 May 1994, *Codorníu* v *Council* (Case C-309/89 [1994] ECR I-1853), is not relevant to this case. It also contends that the name 'Tocai friulano' is not a geographical indication but merely the name of a vine variety and, unlike denominations of origin, it is not covered by the law of industrial and commercial property. Neither the Paris Convention for the Protection of Industrial Property of 20 March 1883 nor the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as 'the TRIPS Agreement') concluded in the context of the World Trade Organisation (OJ 1994 L 336, p. 214) is applicable in this case.

30 The defendant contends that the contested regulation does not constitute an interference with the free exercise of the applicant's regional powers, in particular concerning agriculture, because, in Italy, powers in regard to denominations of origin are exercised by the State, not the regions, which is demonstrated by the fact that the relevant national legislation, which carried over the limitation in time on the use of the name 'Tocai friulano', was adopted by the State. It also contends that in the common organisation of agricultural markets, Member State intervention is limited by Community rules and that, even assuming that the applicant was entitled under national law to regulate the use of the vine variety name in question, its powers are subject to compliance with Community law. In addition, the fact that implementation of a Community measure is likely to affect socio-economic conditions in the territory of a sub-national body is not sufficient for that body to be regarded as individually concerned by the measure at issue.

31 Finally, the Commission contends that effective judicial protection is ensured since the lawfulness of the regulation at issue may be indirectly contested by challenging the national measures linked to it, in the context of which the national court could refer a question to the Court for a preliminary ruling, as has already occurred in regard to the name 'Tocai friulano'.

32 The Republic of Hungary, which supports the Commission's arguments in its objection of inadmissibility, also contends that the provision of the contested regulation of which annulment is sought already appeared in identical form in Regulation No 753/2002 and the time-limit for bringing an action for annulment of that regulation has expired.

33 In addition, the applicant's direct interest in the annulment of the contested regulation has not been demonstrated inasmuch as that regulation grants the right to use the name of each vine variety to the States, not to their territorial subdivisions. The contested provision therefore creates neither rights nor obligations for the Italian regions.

34 The applicant's lack of individual interest is also shown by the fact that it is not the only person concerned by the contested limitation in time, inasmuch as a similar measure has been applied to French wine producers in regard to the Tokay Pinot gris vine variety.

35 The Regione autonoma Friuli-Venezia Giulia claims that its application is admissible.

36 It claims that it is directly concerned by the contested provision because that provision is directly applicable, leaves no discretion to the authorities required to adopt the measures necessary for its implementation and refers specifically to the

name 'Tocai friulano', limiting in time the use thereof. The applicant has a direct interest in maintaining that name both as a producer of grapes of the variety in question and because the wine bearing the name is produced from grapes harvested entirely in its territory, representing a significant part of the region's wine production.

37 The applicant claims that it is individually concerned by the contested provision in its capacity as owner of an experimental vineyard and producer of 'Tocai friulano' grapes, which it is seeking to improve, and that the circumstances of *Codorníu* may be transposed to this case. It claims that the basic regulation authorises the Member States to add the name of a vine variety to the name of a specified region, which has been done in Italy in regard to the name 'Tocai friulano' and that, consequently, the name of the vine variety is an essential part of a geographical indication capable of designating a wine. In addition, the name of a vine variety is property the economic and commercial value of which is recognised in international law, in particular in the TRIPS Agreement.

38 The contested provision adversely affects the economic interests of producers of 'Tocai friulano' wine in the applicant region, interests which the region has a legal duty to protect. Moreover, the damage affects only the Regione autonoma Friuli-Venezia Giulia, the sole region in which that vine variety is cultivated. The applicant thus has a particular interest in maintaining the name at issue, which constitutes property belonging to its territory from both the economic and social point of view.

39 The applicant also claims that it is individually concerned in its capacity as an autonomous institution with exclusive legislative powers in regard to agriculture, conferred on it by the Italian Constitution, under which it is entitled, in the domains in which powers have been conferred on it, to amend national legislation if it considers it appropriate to do so. It points out that the regions, which have had a

right to be consulted since 1963 in regard to the registration of wines in the national vine varieties register, were granted powers, on the basis of Council Regulation (EEC) No 2389/89 of 24 July 1989 on general rules for the classification of vine varieties (OJ 1989 L 232, p. 1), to designate the vine varieties which were to be cultivated in their territory.

40 The applicant also claims that the Court, in its judgment of 15 June 1999, *Regione autonoma Friuli-Venezia Giulia* v *Commission* (Case T-288/97 [1999] ECR II-1871, paragraphs 31 and 41), decided that adequate judicial protection must be provided for, in particular, a public body having the necessary legal personality which is individually and directly concerned by a Community measure if that measure prevents it from exercising its powers as it sees fit.

41 The applicant also claims that account should be taken of the draft Treaty establishing a Constitution for Europe, which amends the fourth paragraph of Article 230 EC, inasmuch as the new version of that provision no longer requires that, in order for actions brought against Community measures by applicants directly concerned by them to be admissible, the applicants must also be individually concerned by those measures.

42 With regard to the Republic of Hungary's argument that the application is out of time, the applicant points out that the defendant did not raise any objection of inadmissibility in that regard. It contends that the limitation in time on the use of the name 'Tocai friulano' contained in Regulation No 753/2002 was based on the agreement concerning wines concluded between the Community and the Republic of Hungary the validity of which it contested in the context of a reference for a preliminary ruling which gave rise to the judgment of the Court of Justice of 12 May 2005, *Regione autonoma Friuli-Venezia Giulia and ERSA* (Case C-347/03 [2005] ECR I-3785). It would not have been logical, therefore, to contest the above-mentioned regulation as long as it was based on an international agreement. The situation was, nevertheless, radically changed by the intervener's accession to the

European Union because the Accession Treaty annulled previous agreements and, in the absence of any express provision to the contrary in that treaty, the ordinary rules of Community law are the only ones applicable.

Findings of the Court

43 The fourth paragraph of Article 230 EC provides that 'any natural or legal person may ... institute proceedings ... against a decision which, although in the form of a regulation ..., is of direct and individual concern to [that person]'.

The nature of the contested provision

44 According to settled case-law, the criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the act in question (Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes and Others* v *Council* [1962] ECR 471, at 498, and Case T-139/01 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2005] ECR II-409, paragraph 87). A measure is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged in the abstract (*Comafrica and Dole Fresh Fruit Europe*, paragraph 87; see also to that effect Case C-244/88 *Usines coopératives de déshydratation du Vexin and Others* v *Commission* [1989] ECR 3811, paragraph 13).

45 In this case, the provision of the contested regulation which the applicant seeks to have annulled, namely the explanatory note concerning a limitation in time on the use of the name 'Tocai friulano' contained in item 103 of Annex I to that regulation,

states that '[t]he name "Tocai friulano" may be used exclusively for quality wines [produced in a specified region] originating in the regions of Veneto and Friuli during a transitional period until 31 March 2007'. That provision is in an annex headed '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) [of Regulation No 753/2002]'. That annex contains two columns, the first indicating the variety names or their synonyms and the second indicating, for each name mentioned in the first column, the country or countries that may use it. The annex lists 122 names of vine varieties or their synonyms and contains an explanatory note limiting in time the right to use the name referred to in three cases. It can be seen from the annex that the limitation in time on the use of the name 'Tocai friulano' also refers, in item 104, to its synonym, 'Tocai italico', and that an identical limitation in time is laid down concerning France in item 105 on the use of the name 'Tokay Pinot gris'. The 119 names or synonyms other than the three mentioned above are not the subject of any such limitation on the right to use them.

46 Thus, the contested provision forms part of a body of general rules the purpose of which is to lay down rules for the use of names of vine varieties or their synonyms which include a geographical indication, in order to protect certain wine sector products in the whole of the European Community. Those rules apply to objectively defined situations. Those situations are the 122 cases in which the names of vine varieties or their synonyms are authorised to appear on wine labels by way of derogation. In the context of Article 19(2)(b) of Regulation No 753/2002, Annex II to that regulation, in the version deriving from Annex I to the contested regulation, provides for three cases of limitation in time on the use of a name, including the provision which the applicant seeks to have annulled.

47 That provision applies to all growers, producers and traders — actual and potential — concerned by the use of the name to which it refers. It is part of the general framework of the rules concerning the designation, naming, presentation and protection of certain wine sector products laid down in the contested regulation, which concerns all operators and all public bodies in the European Community.

48 Thus, the Community rules, having regard to objectively determined situations, provided for a limitation in time of the use of the names of certain vine varieties or their synonyms and that provision, which entails legal effects for categories of persons regarded generally and in the abstract, applies to three cases (see, to that effect, the judgment of the Court of Justice in Case C-41/99 P *Sadam Zuccherifici and Others* v *Council* [2001] ECR I-4239, paragraph 25).

49 The Court of Justice has already recognised that, where an instrument contains limitations or derogations which are temporary in nature (judgments in Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at 415, and Case 64/69 *Compagnie française commerciale et financière* v *Commission* [1970] ECR 221, paragraphs 12 to 15) or territorial in scope (judgment in Joined Cases 103/78 to 109/78 *Société des Usines de Beauport and Others* v *Council* [1979] ECR 17, paragraphs 15 to 19), they form an integral part of the provisions as a whole within which they are found and, in the absence of any misuse of powers, are of the same general nature as those provisions (judgment in Case C-289/89 *Gibraltar* v *Council* [1993] ECR I-3605, paragraph 18).

50 In addition, the general nature of the contested provision is borne out by the fact that a measure producing identical legal effects to the limitation in time on the use of the name 'Tocai friulano' is laid down in respect of another name of vine variety, 'Tokay Pinot gris', a limitation which affects the French region of Alsace in an objectively similar manner (see, to that effect, Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraphs 60 to 63).

51 The contested provision is thus a measure of general application within the meaning of the second paragraph of Article 249 EC, and hence a measure of a legislative nature.

The applicant's individual concern

52 According to the case-law, even if a provision is, by nature and by virtue of its scope, of a legislative nature in that it applies to the traders concerned in general, that does not prevent it from being of individual concern to some of them. That is so where the measure in question affects a natural or legal person by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and thus distinguishes them individually in the same way as the addressee of a decision (see *Codorníu* v *Council*, paragraphs 19 and 20, and Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 36, and the case-law cited therein).

53 In this case, the Regione autonoma Friuli-Venezia Giulia relies, first of all, on its position as the owner of an experimental vineyard which produces the vine variety 'Tocai friulano' and the relevance of the judgment in *Codorníu*, having regard to the economic and commercial value of the vine variety in question, which fulfils the role of a 'collective mark' and is recognised in international law, in particular by the TRIPS agreement.

54 The applicant's position as a producer does not distinguish it individually in the same way as the addressee of a decision. It is settled case-law that the general applicability, and thus the legislative nature, of a measure are not called into question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see *Codorníu* v *Council*, paragraph 18, and *Sadam Zuccherifici and Others* v *Council*, paragraph 29).

55 It must be noted that the prohibition on the use of the name 'Tocai friulano' beyond 31 March 2007 applies generally and for an indeterminate period to all the economic operators concerned, that is to say growers of that vine variety, producers of the wine in question and wine merchants dealing in it.

56 Moreover, the fact that a regulation affects the legal situation of an individual is not sufficient to differentiate that individual (order of the Court of First Instance in Case T-231/02 *Gonnelli and AIFO* v *Commission* [2004] ECR II-1051, paragraph 38).

57 In addition, even though the provision in Annex I to the contested regulation which the applicant is seeking to have annulled is liable to have significant economic consequences for Italian producers of 'Tocai friulano', including the Regione autonoma Friuli-Venezia Giulia, an exactly identical measure appears in the same annex in regard to Tokay Pinot gris, which has similar consequences for the French producers concerned, namely, in both cases, a limitation in time on the right to use the name of the vine variety, including the same final date (see, to that effect, *Commission* v *Nederlandse Antillen*, paragraph 77). Consequently, the effects which the applicants consider to be harmful to the Italian producers are not such as to differentiate them from the other economic operators concerned.

58 In any event, the fact that certain operators are economically more affected by a measure than their competitors does not suffice for them to be regarded as individually concerned by that measure (order of the Court of First Instance in Case T-196/03 *EFfCI* v *Parliament and Council* [2004] ECR II-4263, paragraph 47).

59 In addition, the circumstances in *Codorníu* v *Council*, cited above, are not comparable to this case. In *Codorníu*, the applicant was prevented, by a measure of general application, from using the graphic mark which it had registered and used

traditionally over a long period prior to the adoption of the disputed regulation, so that, in the light of the exclusive right conferred by registration of a trade mark, it was in an entirely different position as compared with all the other economic operators following the adoption of the regulation at issue.

60 That is not the case here. It is clear from the file and from the applicant's own written pleadings that the name 'Tocai friulano', within the meaning both of the Community rules and of the national legislation, is the name of a vine variety containing a geographical indication but is not a geographical indication as such, giving rise to intellectual property rights and protected on that basis. Moreover, the Court decided, under the relevant legislation applicable before the entry into force of the contested regulation, that the names 'Tocai friulano' and 'Tocai italico' were not a geographical indication but the name of a vine or vine variety recognised in Italy as being suitable for the production of certain quality wines produced in specified regions in that Member State whereas the Hungarian wines known as 'Tokaj' or 'Tokaji' were described by reference to a geographical area (*Regione autonoma Friuli-Venezia Giulia and ERSA*, paragraphs 92 and 94). It is neither established nor alleged that the legal status of 'Tocai friulano' has changed subsequently. Although the region relies on the fact that the 'Tocai friulano' vine variety has been cultivated in Italy for a long time, its value from both an economic and a social point of view and its alleged function as a 'collective mark', it has at no time shown that the name 'Tocai friulano' is the subject of either industrial and commercial property rights or intellectual property rights. The reference to *Cordoníu* is therefore irrelevant to the present case.

61 Secondly, the Regione autonoma Friuli-Venezia Giulia claims that it has a statutory duty to protect the economic interests of producers of 'Tocai friulano' wine and points out that the damage caused to it by the contested provision affects it exclusively inasmuch as the vine variety in question is cultivated solely on its territory. In this respect, it is to be observed that, according to settled case-law, the general interest which a region, a body responsible for certain economic affairs within its jurisdiction, may have in obtaining a result that is favourable for its

economic prosperity is not sufficient on its own to enable it to be regarded as being individually concerned, for the purposes of the fourth paragraph of Article 230 EC (judgment in *Commission* v *Nederlandse Antillen*, paragraph 69, and the order of the President of the Court of First Instance in Case T-37/04 R *Região autónoma dos Açores* v *Council* [2004] ECR II-2153, paragraph 118).

62 Thirdly, the Regione autonoma Friuli-Venezia Giulia claims that, as a body responsible for agriculture within its jurisdiction, it may, if it considers it appropriate, amend the corresponding national legislation and it is also entitled under national law to designate the vine varieties to be cultivated in its territory. It is sufficient to point out that the division of legislative and regulatory powers within a Member State is solely a matter for the constitutional law of that State and has no effect from the point of view of assessing the possible effects of a Community legal measure on the interests of a territorial body. In the Community legal order, it is for the authorities of the State to represent any interests based on the defence of national legislation, regardless of the constitutional form or the territorial organisation of that State.

63 In addition, the legislative and regulatory prerogatives which may be conferred on a public law legal person of a Member State, other than the State, are not in themselves of such a nature as to give an individual interest in applying for the annulment of any measure of substantive Community law which does not affect the scope of its powers, as long as, in principle, such prerogatives are not exercised in its own interest by the person on whom they have been conferred.

64 Finally, and for the sake of completeness, the applicant's claims concerning the division of powers in the Italian constitutional order are, in any event, unconvincing inasmuch as they do not deal with the specific question of regulation of the names of vine varieties. On the other hand, the Commission, without being contradicted,

refers to the case-law of the Italian Constitutional Court according to which powers in regard to denominations of origin for wines belong to the State and not to the regions. In any event, the national rules concerning the use of the name 'Tocai friulano' are contained in a measure adopted by a measure of the State, namely a ministerial decree of 26 September 2002, placed on the case-file by the defendant.

65 The region cannot validly claim, therefore, that the contested provision concerns it in the sense of adversely affecting its powers as an institution.

66 It follows from the foregoing that the applicant has not shown that it is individually concerned by the precise provision of the contested regulation of which it is seeking the annulment.

67 The region's arguments relating to the requirements of effective judicial protection and the need for a broader interpretation of the fourth paragraph of Article 230 EC, cannot affect that conclusion. The Court has decided that the requirements of effective judicial protection cannot have the effect of setting aside the condition, laid down in the fourth paragraph of Article 230 EC, that an applicant must be individually concerned (judgment in *Unión de Pequeños Agricultores* v *Council*, paragraph 44, and in Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425, paragraph 36).

68 Lastly, the Court cannot take cognisance of the argument put forward by the applicant regarding Article III-365(4) of the draft Treaty establishing a Constitution for Europe, since that legislation is not yet in force.

69 It follows from the foregoing considerations that the provision limiting to 31 March 2007 the right to use the name 'Tocai friulano' contained in an explanatory note to item 103 in Annex I to the contested regulation cannot be regarded as being of individual concern to the applicants within the meaning of the fourth paragraph of Article 230 EC and that the action must therefore be dismissed, in its entirety, as inadmissible, without it being necessary to examine the other grounds of inadmissibility put forward by the Republic of Hungary.

Costs

70 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the Commission has applied for costs, the applicant must be ordered to bear the costs.

71 Under Article 87(4) of those Rules, the Member States which have intervened in the proceedings are to bear their own costs. The Republic of Hungary, which intervened in support of the pleas in law put forward by the Commission, must therefore be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The application is dismissed as inadmissible;

2. The applicant shall bear its own costs and those of the Commission;

3. The Republic of Hungary shall bear its own costs.

Luxembourg, 12 March 2007.

E. Coulon — H. Legal

Registrar — President