

OPINION OF ADVOCATE GENERAL

JACOBS

delivered on 16 December 2004¹

1. The present case essentially puts in issue the legality of a prohibition, due to take effect in 2007, on the use in Italy of the grape variety names 'Tocai friulano' and its synonym 'Tocai italico'² on wine labels. That prohibition originally derives from an agreement between the Community and Hungary and seeking to protect the Hungarian geographical indication 'Tokaj'.

agreement, that the agreement was based on a misrepresentation of reality so that the relevant provision is null and void as a matter of international law, that the prohibition has been superseded by the TRIPs Agreement⁴ and that the prohibition is inconsistent with the right of ownership protected by the European Convention on Human Rights⁵ and Charter of Fundamental Rights of the European Union.⁶

2. The Regione Autonoma Friuli-Venezia Giulia (the autonomous region of Friuli-Venezia Giulia) and the Agenzia Regionale per lo Sviluppo Rurale (ERSA) (the Regional Agency for Rural Development) ('the applicants') have brought proceedings before the Tribunale Amministrativo Regionale per il Lazio (the Regional Administrative Court for Lazio) seeking annulment of a national law³ which in effect reflects that prohibition. The applicants argue essentially that the Community had no competence to enter into the agreement with Hungary, that the prohibition conflicted with other provisions in the

I — The Association Agreement

3. The Europe Agreement establishing an association between the European Commu-

1 — Original language: English.

2 — The applicants have stated that the name 'Tocai italico' is no longer used; I accordingly refer to it only when it seems relevant or useful.

3 — Ministerial Decree of 26 September 2002 concerning national conditions for the use, in derogation from Article 19(1)(c) of Regulation (EC) No 753/2002, of names of varieties of vines and their synonyms including a geographical indication, listed in Annex II to the said regulation, which may be shown on the label of quality wines psr and Italian IGT wines.

4 — Agreement on trade-related aspects of intellectual property rights, set out in Annex 1C to the Agreement establishing the World Trade Organisation; approved on behalf of the European Community as regards matters within its competence 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 relevant provisions are set out in paragraphs 80 to 82 below.

5 — Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 November 1950; First Protocol adopted on 20 March 1952. The relevant provision is set out in paragraph 92 below.

6 — 7 December 2000; OJ 2000 C 364, p. 1. The relevant provision is set out in paragraph 94 below.

nities and their Member States, of the one part, and the Republic of Hungary, of the other part ('the Association Agreement'), was signed on 16 December 1991 and approved on behalf of the Communities by Decision 93/742/Euratom, ECSC, EC.⁷

a similar meaning as in Article 36 of the EEC Treaty and includes in particular ... geographical indications ... '

4. The substance of the Association Agreement is not at issue in the present case. The Agreement is relevant however since the referring court asks whether it provides a proper and sufficient legal basis for another agreement between the Community and Hungary which is directly at issue and which is considered below.⁸ In that context the referring court mentions the following provisions of the Association Agreement.

6. Paragraph 5 of Annex XIII to the Association Agreement provides:

'The provisions of this Annex and the provisions of Article 74(1) referring to intellectual property are without prejudice to the competence of the European Economic Community and its Member States in matters of industrial, intellectual and commercial property.'

5. The 13th Joint Declaration annexed to the Final Act adopting the Association Agreement⁹ states:

'The Parties agree that for the purpose of this Association Agreement "intellectual, industrial and commercial property" is to be given

II — The Agreement on wine names

7. The Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names ('the Agreement on wine names'), was approved on behalf of the Community by Decision 93/724/EC¹⁰ and signed on 29 November 1993.

7 — Decision of the Council and the Commission of 13 December 1993 on the conclusion of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, OJ 1993 L 347, p. 1; the Association Agreement is attached to the Decision.

8 — At paragraphs 7 to 15.

9 — OJ 1993 L 347, p. 259.

10 — Council Decision of 23 November 1993 concerning the conclusion of an Agreement between the European Community and Republic of Hungary on the reciprocal protection and control of wine names, OJ 1993 L 337, p. 93; the Agreement on wine names is attached to the Decision.

A — *Decision 93/724*

8. The preamble to Decision 93/724 states:

'Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

...

Whereas the Agreement negotiated between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names will help make measures to eliminate unfair competition in trade more effective, ensure a greater degree of consumer protection and promote trade in wine between the Contracting Parties; whereas it is therefore desirable to approve the said Agreement;

...

Whereas, since the provisions of the Agreement are directly linked to measures covered by the common commercial and agricultural policy, the said Agreement must be established at Community level.'

9. Article 1 of Decision 93/724 provides:

'The Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, the Protocol, exchanges of letters and declarations annexed thereto are hereby approved on behalf of the Community.

...'

B — *The Agreement*

10. The preamble to the Agreement on wine names includes the following citations:

'Having regard to the [Association Agreement] ...

...

Having regard to the interest of both Contracting Parties in the reciprocal protection and control of wine names'.

11. Article 4 of the Agreement on wine names states: — may not be used otherwise than under the conditions provided for by the laws and regulations of Hungary.

‘1. The following names are protected:

- ... 4. The protection provided for in paragraph 1 also applies to names even where the true origin of the wine is indicated or the geographical indication or traditional expression is used in translation or accompanied by delocalising expressions such as “kind”, “type”, “style”, “imitation”, “method”, “trade mark” or the like.
- (b) as regards wines originating in Hungary:

...

5. In the case of homonymous or identical geographical indications:

- the geographical indications and traditional expressions referred to in the Annex ...

...

- (a) where two indications, protected by virtue of this Agreement, are homonymous or identical, protection shall be accorded to each indication, provided that:

3. In the Community, the protected Hungarian names:

- are reserved exclusively to the wines originating in Hungary to which they apply, and — the geographical name in question has been used traditionally and consistently to describe and present a wine produced in the geographical area to which it refers,

- the wine is not falsely represented to consumers as originating in the territory of the other Contracting Party;

14. The Exchange of letters, after referring to the Agreement on wine names, states:

...'

'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 psr [produced in a specified region] under the following conditions.

12. The Annex to the Agreement on wine names ('List of protected names for wines referred to in Article 4') lists 'Tokaj' in Part B ('Wines originating in the Republic of Hungary'), under I ('Geographical indications'), point 3.4. The Annex does not include 'Tocai friulano' or 'Tocai italico' in Part A ('Wines originating in the Community').

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

C — *The Exchange of letters*

- obtained from the "Tocai friulano" vine variety;

13. The Exchange of letters concerning Article 4 of the Agreement on wine names ('the Exchange of letters'),¹¹ signed on 29 November 1993, is one of the documents referred to in Article 1 of Decision 93/724.¹²

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

11 — 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.

12 — Set out in paragraph 9 above.

...

3. It is understood that the quality wines psr in question designated and presented in accordance with the applicable provisions before the expiry of the transitional period referred to in point 1 may be put on the market until stocks are exhausted.

negotiations they were not aware of any specific case to which the provisions of this Article could be applicable.

...'

4. Without prejudice to the provisions referred to in point 3, 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.

III — Relevant Community legislation at the time of conclusion of the Agreement on wine names

...'

A — Regulation No 822/87

D — The Joint Declaration

15. According to the Joint Declaration concerning Article 4(5) of the Agreement¹³ ('the Joint Declaration'), which is also one of the documents referred to in Article 1 of Decision 93/724:

16. The basic regulation on the common organisation of the market in wine in 1993 was Council Regulation No 822/87.¹⁴

17. Article 13 of Regulation No 822/87 provided for the Commission to adopt detailed rules for the classification of vine varieties into recommended varieties, authorised varieties and temporarily authorised varieties.

'In respect of Article 4(5)(a) the Contracting Parties noted that at the time of the

¹³ — OJ 1993 L 337, p. 171.

¹⁴ — Council Regulation (EEC) of 16 March 1987 on the common organisation of the market in wine, OJ 1987 L 84, p. 1, repealed and replaced by 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.

18. Article 63 of Regulation No 822/87 provided:

'1. For the purposes of marketing within the Community, imported wines intended for direct human consumption and bearing a geographical ascription may, where reciprocal arrangements can be established, be controlled and protected as provided for in [Article 15 of Regulation (EEC) No 823/87] in respect of quality wines psr.

2. Paragraph 1 shall be implemented by agreements with the relevant third countries to be negotiated and concluded in accordance with the procedure laid down in Article 113 of the Treaty.'

repealed Regulation No 337/79, the list in the Annex to Regulation No 3800/81 remained, thereafter deriving its authority from Article 13 of Regulation No 822/87.

20. Tocai friulano appears on the list in the Annex to Regulation No 3800/81 of vine varieties recommended or authorised in the following provinces of northern and central Italy: Brescia, Mantova, Varese, Padova, Rovigo, Treviso, Venezia, Verona, Vicenza, Gorizia, Pordenone, Udine, Bologna, Ferrara, Ravenna, Ascoli Piceno,¹⁷ Perugia, Terni,¹⁸ Viterbo, Chieti, Aquila, Pescara, Teramo and Sassari.

B — Regulation No 3800/81

19. The classification of vine varieties was governed in 1993 by Commission Regulation No 3800/81,¹⁵ which was originally based on Council Regulation No 337/79 on the common organisation of the market in wine.¹⁶ Although Regulation No 822/87

C — Regulation No 823/87

21. Council Regulation No 823/87¹⁹ laid down rules for quality wines produced in

15 — Regulation (EEC) of 16 December 1981 determining the classification of vine varieties, OJ 1981 L 381, p. 1; repealed by Commission Regulation (EC) No 1227/2000 of 31 May 2000 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards production potential, OJ 2000 L 143, p. 1.

16 — Regulation (EEC) of 5 February 1979, OJ 1979 L 54, p. 1.

17 — Added by Commission Regulation (EEC) No 1543/89 of 2 June 1989, OJ 1989 L 151, p. 16.

18 — Added by Commission Regulation No 3369/92 of 24 November 1992, OJ 1992 L 342, p. 11.

19 — Council Regulation (EEC) of 16 March 1987 laying down special provisions relating to quality wines produced in specified regions, OJ 1987 L 84, p. 59, as amended in particular by Council Regulation (EEC) No 2043/89 of 19 June 1989, OJ 1989 L 202, p. 1; repealed and replaced by Regulation No 1493/1999, cited in footnote 14.

specified regions ('quality wines psr'). 'Specified region' was defined in Article 3(1) as:

method of manufacture or the type of product or by the name of a vine variety or a synonym thereof'.

'a wine-growing area or a combination of wine-growing areas which produces wines with particular quality characteristics and whose name is used ... to designate [quality wines psr]'.

D — *Regulation No 2392/89*

22. Article 1(3) of Regulation No 823/87 required Member States to forward to the Commission the list of quality wines psr which they had recognised; the Commission was to have that list published in the Official Journal. The list which appears to have been applicable in 1993 did not include 'Tocai friulano' or 'Tocai italico'.²⁰

24. With regard to table wines, Article 2(3) of Council Regulation No 2392/89 laying down general rules for the description and presentation of wines and grape musts²¹ authorised the description to be supplemented by inter alia (a) the name of a geographical unit which is smaller than the Member State and (i) 'vino tipico' in the case of table wines originating in Italy.

23. Article 15(4) provided that:

'Without prejudice to the Community provisions concerning specific types of quality wine psr, Member States may ... authorise the name of a specified region to be accompanied by details relating to the

25. With regard to imported wines described by reference to a geographical area, Article 26(1) of Regulation No 2392/89 provided:

'The description on the labelling of imported wines intended for direct human consumption, described by reference to a geographical

20 — Amendment to the list of quality wines produced in specified regions of the Community, OJ 1982 C 348, p. 1. That document replaces the entire 'Italy' section in the previous published list. The list was published under Article 3(2) of Regulation (EEC) No 2247/73 of the Commission of 16 August 1973 on the control of quality wines produced in specified regions, OJ 1973 L 230, p. 12.

21 — Council Regulation (EEC) No 2392/89 of 24 July 1989, OJ 1989 L 232, p. 13; repealed and replaced by Regulation No 1493/1999, cited in footnote 14.

area and appearing on a list to be adopted, shall include the following information:

units smaller than the Member State referred to in ... Regulation (EEC) No 2392/89 ...

- (a) the name of a geographical unit situated in the third country concerned ...'

The Commission shall publish in the C series of the *Official Journal of the European Communities* the names of the geographical units which are communicated to it under the first subparagraph.

E — Regulation No 3201/90

26. Article 11 of Commission Regulation No 3201/90 laying down detailed rules for the description and presentation of wines and grape musts²² provided:

2. The list of imported wines described by reference to a geographical area referred to in Article 26(1) of Regulation (EEC) No 2392/89 is set out in Annex II hereto.

...'

'1. Each producer Member State shall forward to the Commission in respect of the table wines described as ... "vino tipico" ... in accordance with Article 2(3)(i) of Regulation (EEC) No 2392/89:

27. The list of the names of geographical units communicated to the Commission did not contain the name Friuli or Friulano.²³

— as soon as possible after it is drawn up, a list of the names of the geographical

28. The names 'Tokaj or Tokaji' were included in the list in Annex II to Regulation No 3201/90.

22 — Commission Regulation (EEC) of 16 October 1990, OJ 1990 L 309, p. 1; repealed and replaced 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.

23 — See the list published in OJ 1992 C 155, p. 14, as amended by OJ 1993 C 203, p. 4.

29. Article 12(1) of Regulation No 3201/90 provided:

‘The list of the synonyms of names of the vine varieties which may be used to describe table wines and quality wines psr in accordance with Articles 5(1)(b) and 14(1)(b) of Regulation (EEC) No 2392/89 is set out in Annex III hereto.’

‘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:

...

30. The list in Annex III to Regulation No 3201/90 included ‘Tocai friulano’ and ‘Tocai italico’, showing the latter as an ‘accepted synonym’ of the former.

(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;

VI — Current relevant Community and national legislation

31. Regulation No 1493/1999 on the common organisation of the market in wine²⁴ was enacted as part of a codification and simplification of the original legislation governing the wine sector. Regulation No 1493/1999 was implemented by Commission Regulation No 753/2002²⁵ which lays down rules on the labelling of wines.

...

32. Article 19 of Regulation No 753/2002, headed ‘Indication of vine variety’, provides:

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

(a) the variety name or one of its synonyms that includes a geographical indication

²⁴ — Cited in footnote 14.

²⁵ — Cited in footnote 22.

may be shown on the label of a wine with that geographical indication;

used exclusively for quality wines psr originating in the regions of Veneto and Friuli during a transitional period until 31 March 2007'.

- (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.

34. The Italian legislation at issue²⁷ applies the derogation in Article 19(2) in respect of Tocai friulano and Tocai italico, stating that the restriction derives from an agreement between the European Union and the Republic of Hungary. That agreement is of course the Agreement on wine names.

...

V — The main proceedings and the reference

33. Annex II, 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)', originally included 'Tocai Friulano, Tocai Italico'; Italy is listed as the country that may use the name. According to a footnote, 'The name "Tocai friulano" and its synonym "Tocai italico" may be used during a transitional period until 31 March 2007'. That Annex was replaced after the 2004 enlargement;²⁶ the list currently includes 122 vine varieties, including Tocai friulano and Tocai italico with notes that they 'may be

35. It appears that the grape variety Tocai friulano has traditionally been grown in the autonomous region of Friuli-Venezia Giulia.

36. In that region a number of quality wines psr have been recognised, including 'Colli orientali del Friuli', 'Friuli aquilaea', 'Friuli grave', 'Friuli latisana' and 'Isonzo' or 'Isonzo del Friuli'. Those wines may be produced from a number of grape varieties, including Tocai friulano, which produces a dry white wine.

26 — By Commission Regulation (EC) No 1429/2004 of 9 August 2004, OJ 2004 L 263, p. 11.

27 — Cited in footnote 3.

37. The applicants brought proceedings before the referring court challenging the national legislation in so far as the derogation for the use of the names Tocai friulano and Tocai italico expires on 31 March 2007 pursuant to the Agreement on wine names.

38. The applicants argued before the referring court that the Agreement on wine names was unlawful on various grounds.

39. That court has accordingly stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

(1) Can the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, concluded on 16 December 1991 and published in OJ 1991 L 347, provide a proper and sufficient legal basis for conferring on the European Community power to conclude the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names of 29 November 1993 (OJ 1993 L 337), with particular reference to the provisions of Article 65(1), to Joint Declaration No 13 and to Annex XIII (points 3, 4 and 5) of

the Europe Agreement of 1991 on the possible reservation of the sovereignty and jurisdiction of the Member States in the matter of national geographical names used with reference to food and wine and restraint of any transfer of jurisdiction or competence in that matter to the European Community?

(2) In view of, *inter alia*, what is said in Opinion 1/94 of the Court of Justice of the European Communities concerning the exclusive competence of the European Community, should the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names of 29 November 1993 (OJ 1993 L 337), which specifies the protection of geographical names which have intellectual and commercial property significance, be declared invalid and of no effect within the Community legal order because the agreement itself has not been ratified by the individual Member States of the European Community?

(3) In the event that the Community Agreement of 1993 (OJ 1993 L 337) is to be regarded as lawful and applicable in its entirety, should the prohibition of the use in Italy after 2007 of the name "Tocai", which arises from the exchange of letters between the parties to the agreement, annexed to the agreement, be regarded as invalid and of no effect

because it is inconsistent with the rules governing geographical homonyms established in the agreement itself (see Article 4(5) of and the Protocol to the agreement)?

interpreted as meaning that its provisions governing homonyms in wine names apply in place of those of the Community Agreement of 1993 where there is inconsistency between the two, given that the parties to both agreements are the same?

- (4) Should the Second Joint Declaration annexed to the 1993 agreement (OJ 1993 L 337), which implies that the Contracting Parties were unaware, at the time of their negotiations, of the existence of homonyms connected with European and Hungarian wines, be regarded as a clear misrepresentation of reality (given that the Italian and Hungarian names used to refer to "Tocai" wines have existed alongside each other for centuries, were officially recognised in 1948 in an agreement between Italy and Hungary and were recently brought within the scope of Community law) such as to render null and void that part of the 1993 agreement which prohibits the use in Italy of the name Tocai, on the basis of Article 48 of the Vienna Convention on the Law of Treaties?
- (5) In the light of Article 59 of the Vienna Convention on the Law of Treaties, is the Agreement on Trade-Related Aspects of Intellectual Property Rights (OJ 1994 L 336), which was concluded within the context of the World Trade Organisation (WTO) and entered into force on 1 January 1996, thus after the Community Agreement of 1993 (OJ 1994 L 337) entered into force, to be interpreted as meaning that its provisions governing homonyms in wine names apply in place of those of the Community Agreement of 1993 where there is inconsistency between the two, given that the parties to both agreements are the same?
- (6) In the case of two names that are homonyms and refer to wines produced in two different countries both party to the TRIPs Agreement (and both where the homonym relates to two geographical names used in both the countries party to TRIPs and where it relates to a geographical name in one country and the like name relates to a vine traditionally cultivated in another country party to TRIPs), must Articles 22 to 24 in [Part II, Section 3 of Annex IC] to the Agreement establishing the World Trade Organisation, which contains the TRIPs Agreement (OJ 1994 L 336), which entered into force on 1 January 1996, be interpreted as meaning that both the names may continue to be used provided that they have been used in the past by the respective producers either in good faith or for at least 10 years prior to 15 April 1994 (Article 24(4)) [of the TRIPs Agreement] and each name clearly indicates the country or region or area of origin of the wine to which it refers in such a way as not to mislead consumers?

(7) Does the right of ownership set out in Article 1 of Protocol No 1 to the European Convention on Human Rights and Fundamental Freedoms and taken up in Article 17 of the Charter of fundamental rights of the European Union proclaimed in Nice on 7 [December] 2000 also cover intellectual property in the names of the places of origin of wines and the exploitation thereof, and, consequently, does the protection of that right preclude application of the agreement set out in the exchange of letters annexed to the Agreement between the European Community and the Republic of Hungary on reciprocal protection and control of wine names (OJ 1994 L 337), but not included in the body of that agreement, under which wine producers of the Friuli region will not be permitted to use the name “Tocai Friulano”, particularly in view of the total lack of any compensation to the wine producers of the Friuli region thus dispossessed, the lack of any general public interest justifying their dispossession and the disregard for the principle of proportionality?

(8) In the event that it is held that the Community provisions contained in the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names of 29 November 1993 (OJ 1993 L 337) and/or the exchange of letters annexed thereto are unlawful to the extent described in the preceding questions, must the provisions of Regulation (EC) No 753/2002, under which use of the name “Tocai

Friulano” is to be prohibited after 31 March 2007 (Article 19(2)), be regarded as invalid or in any event of no effect?’

40. Written observations have been submitted by the applicants, the Italian Government, the Council and the Commission, all of whom, together with the Hungarian Government, were represented at the hearing.

41. The applicants and the Italian Government in addition provided a written response to the Court’s request that they take a position on the submissions of the Council and the Commission to the effect that the name ‘Tocai friulano’ and its synonym ‘Tocai italico’ are not and never have been geographical indications, but are rather the name of a vine or grape variety.

VI — The first question

42. By its first question the referring court asks whether the Association Agreement conferred on the Community power to conclude the Agreement on wine names.

43. It is settled law that the competence of the Community to enter into international commitments flows either directly or by implication from express provisions of the Treaty.²⁸

44. It is clear therefore that the competence of the Community to conclude the Agreement on wine names cannot derive from the Association Agreement.

45. Article 133 EC on the other hand explicitly confers on the Council the power to implement the common commercial policy. The preamble to Council Decision 93/724 states that that decision is based on Article 133 EC. Article 1 states that the Agreement on wine names together with the Protocol, exchanges of letters and declarations annexed thereto 'are hereby approved on behalf of the Community'. It is thus clear that as a matter of Community law the Agreement on wine names was properly approved in accordance with the Treaty. As the Council and the Commission submit, the legal basis of an agreement is stated in the preamble to the Council decision concluding and approving the agreement in question. There is no mention in the Decision of the Association Agreement as legal basis. Although the Association Agreement is

mentioned in the preamble to the Agreement on wine names, the recitals of an international agreement cannot indicate the legal basis in the legal order of each contracting party. In the Community legal order, that basis is determined after the text of the agreement has been finalised and in the light of the object and content of that text. The reference to the Association Agreement in the preamble to the Agreement on wine names simply sets that agreement in its political and legal context.

46. The applicants and the Italian Government submit that geographical indications for wine fall within the scope of intellectual property and that Member States had exclusive competence in so far as the Agreement on wine names concerned intellectual property rights: see Annex XIII to the Association Agreement.²⁹ The Community accordingly was not competent to conclude the Agreement on wine names.

47. That submission is more appropriately considered in the context of the second question referred.

28 — See for example Opinion 2/94 pursuant to Article 228(6) of the EC Treaty [1996] ECR I-1759, paragraph 26.

29 — See paragraph 6 above.

VII — The second question

48. By its second question the referring court asks whether, in view of what is said in Opinion 1/94³⁰ of the Court of Justice concerning the exclusive jurisdiction of the European Community, the Agreement on wine names is invalid and of no effect within the Community legal order because it has not been ratified by the individual Member States of the European Community. The issue in other words is whether the Community had exclusive competence to enter into the Agreement on wine names or whether that Agreement was, on a correct analysis, a mixed agreement to which both the Community and the Member States should have been parties.

49. It is not disputed that the Community has exclusive competence where expressly conferred by the Treaty or where the Community, with a view to implementing a common policy envisaged by the Treaty, has adopted provisions laying down common rules.³¹

50. The Court in Opinion 1/94 came to the conclusion on two grounds that the Community and the Member States were jointly competent to conclude the TRIPs Agree-

ment. First, apart from those of its provisions which concern the prohibition of the release into free circulation of counterfeit goods, the TRIPs Agreement does not fall within the scope of the common commercial policy, in which exclusive competence was conferred by Article 133 EC. Second, the harmonisation achieved within the Community in certain areas covered by the TRIPs Agreement is only partial and in other areas no harmonisation has been envisaged.³²

51. The applicants and the Italian Government submit that the Treaty makes no provision for exclusive competence in the field of intellectual property and that when the Agreement on wine names was being negotiated there were no Community provisions covering intellectual property rights in nationally governed geographical denominations of wine: Community legislation in the wine sector simply recognised the denominations registered in each Member State.

52. Those parties further submit that not only does the Community lack exclusive competence but the Member States have exclusive competence in the area of intellectual property. In support of that view they invoke Annex XIII to the Association

30 — Opinion pursuant to Article 228(6) of the EC Treaty [1994] ECR I-5267.

31 — Case 22/70 *Commission v Council* [1971] ECR 263 ('ERTA'), paragraphs 16 and 17 of the judgment.

32 — Paragraphs 71, 103 and 105 of the Opinion.

Agreement, which states that the provisions of the Annex are without prejudice to the competence of the Community and its Member States in matters of intellectual property.

competence of the Community. Indeed Article 63 of Regulation No 822/87 explicitly stated that imported wines 'may, where reciprocal arrangements can be established, be controlled and protected as provided for in [Article 15 of Regulation No 823/87] in respect of quality wines psr'.

53. I do not consider that the statement in Annex XIII to the Association Agreement invoked by the Italian Government assists: the Court has not been asked about the status of the Association Agreement and in any event the wording of Annex XIII is inconclusive.

54. Article 1 of the Agreement on wine names states that the parties 'agree, on the basis of reciprocity, to protect and control names of wines originating in the Community and in Hungary on the conditions provided for in this Agreement'.

55. It seems abundantly clear, as submitted by the Council and the Commission, that at the time the Agreement on wine names was concluded the protection and control of wine names — the only aspect of intellectual property rights which is potentially at issue in the present case — was the subject of comprehensive regulation at Community level, of which the legislation set out in paragraphs 16 to 33 above is but the tip of the iceberg, and thus within the exclusive

56. It is moreover stated in the preamble to Decision No 93/724 that the Agreement on wine names 'will help make measures to eliminate unfair competition in trade more effective, ensure a greater degree of consumer protection and promote trade in wine between the Contracting Parties' and that 'the provisions of the Agreement are directly linked to measures covered by the common commercial and agricultural policy'.³³ The Court in Opinion 1/94 confirmed that the agreements on wine between the Community on the one hand and Austria and Australia respectively on the other, which are in substance analogous to the Agreement on wine names at issue in the present case, were within the exclusive competence of the Community and correctly based on Article 133 EC 'because [their] provisions are directly linked to measures covered by the common agricultural policy, and specifically by the Community rules on wine and wine-growing'.³⁴

33 — First and third recitals.

34 — Paragraphs 69 and 70.

57. Finally, it may also be noted that the Italian Government, in its response to the question put by the Court, states that, for Hungary, the wine sector has been exclusively regulated by Community law since its accession in May 2004. However, as I have pointed out, such exclusive regulation entails exclusive competence for the Community in the area. Since the extent of that regulation was essentially the same both before and after that date, that assertion appears to imply recognition that the Community also had exclusive competence when the Agreement on wine names was entered into.

Where therefore there is conflict between the two, the annexes cease to be effective.

60. Whatever the strength of that statement as a general proposition, it will clearly be relevant to the present case only if there is in fact a conflict between the provisions concerned.

VIII — The third question

58. By its third question the referring court asks whether, if the Agreement on wine names is to be regarded as lawful and applicable in its entirety, the prohibition of the use in Italy after 2007 of the name 'Tocai', which arises from the Exchange of letters annexed to the Agreement, is invalid and of no effect because it is inconsistent with the rules governing geographical homonyms established in Article 4(5) of the Agreement.

61. Article 4(5) of the Agreement on wine names regulates the situation of 'homonymous or identical geographical indications'. Article 2(2) of the Agreement defines 'geographical indication' as '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'.

59. The applicants submit that the provisions of annexes to an agreement cannot affect the provisions of the agreement itself.

62. The name 'Tocai friulano' will therefore fall within Article 4(5) of the Agreement on wine names only if it is recognised in Community law as described in the preceding paragraph.

63. It is clear that that is not the case. At the relevant time, that name was recognised as a vine variety and not as a quality wine *psr* within the meaning of Regulation No 823/87,³⁵ which was the Community equivalent of a geographical indication for wine.³⁶ There is moreover no suggestion that a given quality, reputation or other characteristic of the wine produced from that vine variety is essentially attributable to its geographical origin.

64. More specifically, Article 4(5)(a) applies to indications which are 'protected by virtue of [the] Agreement'. Article 4(1)(a) provides that, as regards wines originating in the Community, 'the geographical indications and traditional expressions referred to in the Annex' are protected. The list of wines originating in the Italian Republic in the Annex to the Agreement on wine names makes no mention of 'Tocai friulano' or 'Tocai italico'.

65. In response to the Court's request that they take a position on whether the name 'Tocai friulano' is a geographical indication or a vine variety, the applicants and the Italian Government refer to Article 15(4) of

Regulation No 823/87,³⁷ which authorises Member States to allow the name of a specified region to be combined with the name of a vine variety, and assert that that is what has happened with 'Tocai friulano'.

66. Article 15(4), however, in my view does no more than it says: Member States may allow the combination of the name of a specified region with vine variety. In certain wine-growing areas this practice is common: for example, Alsace Pinot gris,³⁸ Valle d'Aosta Pinot nero or Moselle Luxembourg-geoise Riesling. Neither the combined name nor the vine variety mentioned thereby becomes a geographical indication within the meaning of the Agreement on wine names.

67. There is accordingly no inconsistency between the prohibition arising from the Exchange of letters and the rules governing geographical homonyms in Article 4(5) of the Agreement on wine names.

35 — See paragraphs 20, 22 and 27 above.

36 — Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ 1992 L 208, p. 1, does not apply to wine: see Article 1(1).

37 — Set out in paragraph 23 above.

38 — 'Tokay', a synonym in Alsace for the grape variety Pinot gris, is the subject of a parallel exchange of letters between the Community and Hungary, which provide an identical transitional derogation from the prohibition on use of the term: OJ 1993 L 337, p. 167.

IX — The fourth question

68. By its fourth question the referring court asks whether the Joint Declaration annexed to the Agreement on wine names,³⁹ which implies that the contracting parties were unaware, at the time of their negotiations, of the existence of homonymic denominations connected with Community and Hungarian wines, should be regarded as a clear misrepresentation of reality (given that the Italian and Hungarian names used to refer to 'Tocai' wines have existed alongside each other for centuries, were officially recognised in 1948 in an agreement between Italy and Hungary and were recently brought within the scope of Community law) such as to render null and void, on the basis of Article 48 of the Vienna Convention on the Law of Treaties,⁴⁰ that part of the Agreement on wine names which prohibits the use in Italy of the name Tocai.

69. Article 48(1) of the Vienna Convention provides:

'A State may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at

the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.'

70. The applicants and the Italian Government submit that the Exchange of letters results from a misrepresentation of the facts at the time, namely the indisputable, peaceful and continuous use of the two denominations; by virtue of Article 48 of the Vienna Convention the annexes removing the right to use those denominations are accordingly inapplicable.

71. The first paragraph of the Joint Declaration states:

'In respect of Article 4(5)(a) the Contracting Parties noted that at the time of the negotiations they were not aware of any specific case to which the provisions of this Article could be applicable.'

72. I have explained in the context of the third question referred why I do not consider that Article 4(5) is applicable on the facts of the present case.⁴¹

39 — See paragraph 15 above.

40 — UNTS vol. 1155, p. 331. The Vienna Convention was adopted on 23 May 1969 and entered into force on 27 January 1980.

41 — See paragraphs 61 to 64 above.

73. For the same reason, the Joint Declaration cannot be regarded as a clear misrepresentation of reality.

76. Article 59(1) of 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:

74. In any event, as the Hungarian Government submitted at the hearing, Article 48 of the Vienna Convention may be invoked only by the parties to the treaty concerned.

(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

X — The fifth and sixth questions

75. By its fifth question the referring court asks whether, in the light of Article 59 of the Vienna Convention, the provisions of the TRIPs Agreement⁴² governing homonyms in vine names apply in place of those of the Agreement on wine names where there is inconsistency between the two, given that the parties to both agreements are the same and that the TRIPs Agreement entered into force on 1 January 1996 and hence after conclusion of the Agreement on wine names.

(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.’

77. Since the national court’s question arises only on the hypothesis that the relevant provisions of the TRIPs Agreement are inconsistent with the Agreement on wine names, it seems sensible to adopt the Commission’s approach and consider that issue first, which is the subject of the sixth question.

42 — Cited in footnote 4.

78. By that question the referring court asks whether, in the case of two names which are homonyms and which refer to two different wines (and in the circumstances further spelt out in the question, as set out above), Articles 22 to 24 of the TRIPs Agreement mean that both names may continue to be used provided that they have been used in the past by the respective producers either in good faith or for at least 10 years prior to 15 April 1994 (Article 24(4)) and each name clearly indicates the country, region or area of origin of the wine to which it refers in such a way as not to mislead consumers.

79. Articles 22 to 24 of the TRIPs Agreement constitute Section 3 ('Geographical Indications') of Part II ('Standards concerning the availability, scope and use of intellectual property rights') of that agreement.

80. Article 22(1) of the TRIPs Agreement 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.'

81. Article 23 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, 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.

...

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 products concerned and that consumers are not misled.

...'

82. Article 24 provides:

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.

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

...'

...

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.

83. The applicants and the Italian Government submit that the TRIPs Agreement is currently the norm for the Community, the Member States and the other Contracting Parties for the regulation of homonymous wine denominations and requires such names to be protected provided that they are used in a manner which is technically correct and in good faith. Article 23 protects the right of interested parties to continue to use homonymous geographical indications while Article 24(4) leaves it to Members to regulate continued use in good faith of geographical indications for 10 years preceding 15 April 1994. Those provisions are incompatible with the prohibition on using the name 'Tocai friulano' deriving from the annexes to the Agreement on wine names, which cannot therefore be justified.

...

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

84. In their responses to the question put by the Court, the applicants and the Italian Government further submit that Article 24 (6) of the TRIPs Agreement clearly establishes a parallel between 'geographical indi-

cation' and 'name of a grape variety', and accordingly prevents the geographical indication 'Tokaj' from being invoked by Hungary to prohibit the use of the name 'Tocai friulano'.

identify a good as originating in a national territory, region or locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Again, there has been no suggestion that a specific quality, reputation or other characteristic of the wine produced from fruits of the Tocai friulano vine in the region at issue is essentially attributable to its geographical origin. Article 23(3) is accordingly in my view inapplicable.

85. I do not accept those arguments.

86. Article 23(1) imposes an explicit obligation on Members to protect geographical indications identifying wines against use for wines not originating in the place indicated by that geographical indication; there is no need to establish confusion or deception. It is common ground that 'Tokaj' is a geographical indication within the meaning of TRIPs. Prima facie therefore Article 23(1) requires Members to protect that indication against use for wines not originating in the Tokaj region.

88. For the same reason, Article 24(4), which permits Members to regulate continued use in good faith of geographical indications in certain circumstances, cannot apply to the continued use of the name 'Tocai friulano'.

87. Article 23(3) qualifies the general nature of the protection required pursuant to Article 23(1) in the case of two homonymic geographical indications.⁴³ For the purposes of the TRIPs Agreement, 'geographical indications' are defined as indications which

89. Finally, Article 24(6) simply permits Members to authorise the use of the name of a grape variety which is a homonym of a geographical indication in another Member State, but does not oblige it to do so. Manifestly the Community has waived that option with effect from the end of March 2007 by way of a bilateral agreement with Hungary, which is explicitly provided for by Article 24(1) and which is, as discussed in the context of the first two questions, within the Community's exclusive competence.

43 — An example used during the negotiations was Rioja, which is a wine-producing region in both Spain and Argentina: see C.M. Correa and A.A. Yusef, *Intellectual Property and International Trade* (1998), p. 176.

90. On the basis of the foregoing, I do not consider that the relevant provisions of the TRIPs Agreement are incompatible with the Agreement on wine names; there is accordingly no scope for application of Article 59 of the Vienna Convention.

92. The first paragraph of Article 1 of the First Protocol to the European Convention on Human Rights provides:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.'

XI — The seventh question

91. By its seventh question the referring court asks whether the right of ownership set out in Article 1 of the First Protocol to the European Convention on Human Rights⁴⁴ and taken up in Article 17 of the Charter of Fundamental Rights of the European Union⁴⁵ also covers intellectual property in the names of the places of origin of wines and the exploitation of those names, and, consequently, precludes application of the agreement set out in the Exchange of letters under which wine-producers of the Friuli-Venezia Giulia region are not permitted to use the name 'Tocai Friulano', particularly in view of the total lack of any compensation to those wine-producers, the lack of any general public interest justifying their dispossession and the evident disregard for the principle of proportionality.

93. Although that provision makes no mention of compensation, the requirement that the general principles of international law should be observed is generally accepted as enshrining entitlement to compensation for deprivation of possessions.

94. Article 17 of the Charter, entitled 'Right to property', provides:

'1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.'

44 — Cited in footnote 5.

45 — Cited in footnote 6.

2. Intellectual property shall be protected.’

95. The applicants submit that the right of Italian wine-makers to use the denomination ‘Tocai friulano’ falls within the scope of ‘possessions’ within the meaning of the Protocol, which is an autonomous notion not limited to corporeal goods; the Italian Government at the hearing asserted that the right to use the name of a specific grape variety was economic in nature. The Council and the Commission submit that the present case does not concern property within the meaning of the Convention or the Charter, even in the sense of intellectual property: the terms ‘Tocai friulano’ and ‘Tocai italico’ are not geographical indications but grape varieties. Neither the Paris Convention⁴⁶ nor the TRIPs Agreement mentions grape variety names as a category of intellectual property.

96. The applicants are correct in asserting that ‘possessions’ in the Protocol is an autonomous notion extending to incorporeal goods of economic value. The European Court of Human Rights has in particular accepted, in the context of the withdrawal of a licence to serve alcoholic beverages at a restaurant, that the economic interests connected with the running of the restaurant in question were ‘possessions’ for the purposes of Article 1 of the Protocol, given that the maintenance of the licence was one of the principal conditions for the carrying on of

the business, and that its withdrawal had adverse effects on the goodwill and value of the restaurant. The Court accordingly concluded that the withdrawal constituted, in the circumstances of the case, an interference with the restaurant manager’s right to the ‘peaceful enjoyment of [his] possessions’ (although it found the interference lawful, proportionate and in the general interest).⁴⁷

97. I do not however consider that decision to be analogous to the present case. There has been no suggestion that continued use of the name ‘Tocai friulano’ for the grape variety used in the production of wines from the Friuli Venezia Giulia region is one of the principal conditions for carrying on the business of producing such wines, nor any substantiation of the Italian Government’s implication that prohibiting such use would have adverse effects on the goodwill and value of that business. The wine producers affected will remain entitled to market their wines under the various designations of origin which have been registered for the area. If they wish to continue identifying the grape variety used, it appears that there are acceptable synonyms recognised by the International Vine and Wine Office: the Commission mentioned at the hearing ‘sauvignonasse’ and ‘trebbianello’.

46 — Paris Convention for the Protection of Industrial Property of 20 March 1883.

47 — Case 4/1988/148/202 *Tre Traktörer Aktiebolag v Sweden* (1989) EHRR 309.

98. I would also add that it seems doubtful whether the applicants can properly plead an infringement of the right to property under the Convention given that they are not wine producers and have not shown how they would be affected.

99. Accordingly I am not persuaded that, at least in the circumstances of the present case, the right to use the name of a grape variety in marketing a given wine is a property right covered by Article 1 of the First Protocol. However, I will briefly consider the question whether, if there were such a property right, it would preclude prohibition of the use of that name.

100. The first sentence of Article 1 of the First Protocol confers entitlement to the peaceful enjoyment of possessions; the second sentence provides that no one is to be deprived of his possessions 'except in the public interest and subject to the conditions provided for by law and by the general principles of international law'.

101. With regard to interference with peaceful enjoyment not amounting to deprivation, some general guidance in a similar context is provided by the decision of the Court of Justice in *SMW Winzersekt*.⁴⁸ In that case,

German producers of sparkling wine challenged Community legislation⁴⁹ which prohibited, subject to a five-year transitional period, the use of the expression 'méthode champenoise' for sparkling wines not entitled to the designation of origin 'Champagne'. The producers submitted that that prohibition adversely affected their right to property.

102. The Court held that in matters concerning the common agricultural policy the Community legislature had a broad discretion so that a measure adopted in that sphere would be unlawful only if it were manifestly inappropriate in the light of its objective. The right to property was not absolute; the exercise of that right could accordingly be restricted, particularly in the context of the common organisation of a market, provided that those restrictions corresponded to objectives of general interest pursued by the Community and did not constitute a disproportionate and intolerable interference impairing the very substance of the rights guaranteed. The designation 'méthode champenoise' was a term which, prior to the legislation in question, all producers of sparkling wines were entitled to use. The prohibition of the use of that designation could not be regarded as an infringement of an alleged property right vested in the applicant producers. Finally, by adopting transitional arrangements and by allowing the producers to use alternative expressions

49 — Council Regulation (EEC) No 2333/92 of 13 July 1992 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines, OJ 1992 L 231, p. 9.

48 — Case C-306/93 [1994] ECR I-5555.

(such as 'traditional method'), the Council had taken account of the producers' position; in those circumstances, the legislation could not be regarded as disproportionate.⁵⁰

103. Similarly in the present case it seems clear that even if there has been an interference with the right of enjoyment of a possession, the principle of proportionality has been observed: Italian growers of Tocai friulano vines and producers of wines from grapes of that variety have benefited from a transitional period of 13 years to adapt to the new situation created by the Agreement on wine names and as mentioned above⁵¹ there appear to be alternative vine names available.

105. First, there is a clear public interest in the Community's entering into reciprocal arrangements for the protection of wine names. Second, there is a clear basis in Community law for the prohibition, namely the legislative framework (which, since it is copious and not in dispute, I have not set out in any detail) for the description of wines, in the context of which the prohibition in question is manifestly designed to reduce the risk of confusion between the name of the vine variety used in a wine and the name of the geographical area where it is produced. Finally, there is nothing to suggest that the prohibition is contrary to any principle of international law. In particular, the effect of the long transitional period, the limited effect of the prohibition (in that quality wines *psr* may continue to be produced from the variety) and the availability of alternative vine names mean in my view that there is no entitlement to compensation.

106. Similar considerations to those discussed above apply to Article 17 of the Charter.

104. With regard to the second sentence of Article 1 of the First Protocol, even if the prohibition on use of 'Tocai friulano' amounts to depriving the affected wine producers of a possession it seems to me that it would be 'in the public interest and subject to the conditions provided for by law and by the general principles of international law' and hence permitted by the Convention.

XII — The eighth question

107. By its eighth and final question the referring court asks whether, if the Agreement on wine names and/or the Exchange of letters is unlawful, Article 19(2) of Regula-

50 — Paragraphs 21 to 23 and 28 of the judgment.

51 — At paragraph 97.

tion (EC) No 753/2002,⁵² under which use of the name 'Tocai friulano' is to be prohibited after 31 March 2007, is invalid and of no effect.

Agreement on wine names or of the 'Tocai' problem, the wine sector is in any event exclusively regulated by Community law for Hungary. Regulation No 753/2002 provides for an approach to some 122 vine varieties that include a geographical indication, and hence that are in an identical situation to Tocai friulano, which is diametrically opposed to that applying to Tocai friulano: those 122 varieties are authorised to appear on wine labels in derogation from Article 19 (1)(c) of that regulation.

108. The applicants submit that the prohibition in the annex to Regulation No 753/2002 is unlawful since it infringes the principle of non-discrimination. Among the 106 grape varieties which Community law permits to be used in wine denominations, only 'Tocai friulano' is subject to a temporal limitation. In addition the principle of proportionality and the obligation to state reasons are infringed. Finally, since there is nothing in the TRIPs agreement requiring WTO members to remove the legal protection of homonymic geographical indications, the prohibition set out in Regulation No 753/2002 is unlawful.

109. The applicants and the Italian Government, in their response to the question put by the Court, further submit that, since the Agreement on wine names came to an end with the accession of Hungary to the European Union, and since the Treaty of Accession contains no mention either of the

110. All those arguments, however, manifestly go beyond the scope of the question referred by the national court, which is explicitly put on the hypothesis that the Agreement on wine names and/or the Exchange of letters is unlawful. The referring court therefore puts in issue the validity of Regulation No 753/2002 (which could have been, but was not, challenged directly by Italy under Article 230 EC) only indirectly, as a consequence of the alleged invalidity of the Agreement on wine names. Since I do not consider, on the basis of my analysis of the preceding questions, that that Agreement is unlawful, I concur with the Commission's view that the eighth question does not call for an answer.

⁵² — Cited in footnote 22.

Conclusion

111. In the light of the foregoing I have reached the following conclusions:

- (1) the Agreement on wine names was correctly and adequately based on Article 133 EC and its conclusion was within the exclusive competence of the Community;
- (2) for the purposes of both the Agreement on wine names and the TRIPs Agreement, Tokaj is a geographical indication whereas Tokai friulano is not; therefore
 - there is no inconsistency between the prohibition on the use of Tokai friulano after 31 March 2007 and the rules on geographical indications in the Agreement on wine names,
 - the Joint Declaration does not misrepresent reality and
 - there is no inconsistency between the Agreement on wine names and the TRIPs Agreement;

- (3) the right to use a grape variety name in marketing wine is not a possession within the meaning of Article 1 of the First Protocol to the European Convention on Human Rights or Article 17 of the Charter of Fundamental Rights of the European Union but in any event there has been no unlawful interference contrary to the Convention or the Charter in the present case.

112. I am accordingly of the opinion that the questions referred by the Tribunale Amministrativo Regionale per il Lazio should be answered as follows:

Examination of the questions referred has not revealed any factors capable of calling into question the validity of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, approved on behalf of the Community by Decision 93/724/EC and signed on 29 November 1993, or the Exchange of letters concerning Article 4 of that Agreement.