Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 27 June 2024[1]

Case C-579/23 P

Cunsorziu di i Salamaghji Corsi – Consortium des Charcutiers Corses,
Charcuterie Fontana,
Costa et fils,
L'Aziana,
Charcuterie Passoni,
Orezza – Charcuterie la Castagniccia,
Salaisons réunies,
Salaisons Joseph Pantaloni,
Antoine Semidei,
L'Atelu Corsu
v

European Commission

(Appeal – Agriculture – Regulation (EU) No 1151/2012 – Protection of designations of origin (PDOs) and geographical indications (PGIs) – Rejection of the applications for 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' – Eligibility of names – Evocation of the prior PDOs 'Jambon sec de Corse/Prisuttu', 'Lonzo de Corse/Lonzu' and 'Coppa de Corse/Coppa di Corsica' – Scope of the Commission's control of the applications for registration)

1. This appeal is brought against the judgment of the General Court of 12 July 2023,[2] dismissing the action for annulment brought against Implementing Decision (EU) 2021/1879,[3] which refused the registration of three protected geographical indications ('PGIs').

[1] Original language: Spanish.

[2] Judgment in *Cunsorziu di i Salamaghji Corsi – Consortium des Charcutiers Corses and Others* v *Commission* (T-34/22, EU:T:2023:386; 'the judgment under appeal').

[3] Commission Implementing Decision of 26 October 2021 rejecting three applications for protection of a geographical indication in accordance with Article 52(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council 'Jambon sec de l'Île de Beauté' (PGI), 'Lonzo de l'Île de Beauté' (PGI), 'Coppa de l'Île de Beauté') (PGI) (OJ 2021 L 383, p. 1; 'the decision at issue').

2. The European Union has a highly developed system of protection for the registered names of agricultural products and foodstuffs.[4] This system has recently been reformed, amended and unified with effect from 13 May 2024 by Regulation (EU) No 2024/1143,[5] which establishes a more unified system for geographical indications for wine, spirit drinks and agricultural products and which repeals Regulation No 1151/2012. That new Regulation No 2024/1143 is not applicable to the present dispute, but its provisions do not substantially differ from those of Regulation No 1151/2012 in respect of the questions referred in this case.

3. Regulation No 1151/2012 establishes a common and centralised system of protection for the entire European Union, be it in relation to protected designations of origin ('PDOs') or PGIs.

4. Applications for protection of PGIs are dealt with by means of a composite administrative procedure, involving the national authorities and the European Commission.

5. Until now, the Court of Justice has, principally, dealt with disputes relating to the 'national' stage of that procedure. This appeal will allow it examine up to what point the Commission may, in the 'European' stage of the procedure, refuse the inclusion in the register[6] of various PGIs previously approved by the French authorities.

I. Legal context: Regulation No 1151/2012

6. Recital 58 states:

'To ensure that registered names of designations of origin and geographical indications and traditional specialities guaranteed meet the conditions laid down by this Regulation, applications should be examined by the national authorities of the Member State concerned, in compliance with minimum common provisions, including a national opposition procedure. The Commission should subsequently scrutinise applications to ensure that there are no manifest errors and that Union law and the interests of stakeholders outside the Member State of application have been taken into account.'

7. Article 13 ('Protection') states:

'1. Registered names shall be protected against:

…

(b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar, including when those products are used as an ingredient;

[4] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1).

[5] Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012 (OJ L 2024/1143).

[6] The EU's register of geographical indications is called eAmbrosia and is available at https://ec.europa.eu/agriculture/eambrosia/geographical-indications-register/. eAmbrosia is a legal register of the names of agricultural products and foodstuffs, wine, and spirit drinks that are protected across the EU. It provides direct access to information on all registered geographical indications, including the legal instruments of protection and product specifications.

…

3. Member States shall take appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin and protected geographical indications, as referred to in paragraph 1, that are produced or marketed in that Member State.

…'

8. Article 49 ('Application for registration of names') provides:

'1. Applications for registration of names under the quality schemes referred to in Article 48 may only be submitted by groups who work with the products with the name to be registered.

…

2. Where the application under the scheme set out in Title II relates to a geographical area in a Member State, or where an application under the scheme set out in Title III is prepared by a group established in a Member State, the application shall be addressed to the authorities of that Member State.

The Member State shall scrutinise the application by appropriate means in order to check that it is justified and meets the conditions of the respective scheme.

3. As part of the scrutiny referred to in the second subparagraph of paragraph 2 of this Article, the Member State shall initiate a national opposition procedure that ensures adequate publication of the application and that provides for a reasonable period within which any natural or legal person having a legitimate interest and established or resident on its territory may lodge an opposition to the application.

The Member State shall examine the admissibility of oppositions received under the scheme set out in Title II in the light of the criteria referred to in Article 10(1), or the admissibility of oppositions received under the scheme set out in Title III in the light of the criteria referred to in Article 21(1).

4. If, after assessment of any opposition received, the Member State considers that the requirements of this Regulation are met, it may take a favourable decision and lodge an application dossier with the Commission. It shall in such case inform the Commission of admissible oppositions received from a natural or legal person that have legally marketed the products in question, using the names concerned continuously for at least five years preceding the date of the publication referred to in paragraph 3.

The Member State shall ensure that its favourable decision is made public and that any natural or legal person having a legitimate interest has an opportunity to appeal.

The Member State shall ensure that the version of the product specification on which its favourable decision is based, is published, and shall provide electronic access to the product specification.

With reference to protected designations of origin and protected geographical indications, the Member State shall also ensure adequate publication of the version of the product specification on which the Commission takes its decision pursuant to Article 50(2).

5. Where the application under the scheme set out in Title II relates to a geographical area in a third country, or where an application under the scheme set out in Title III is prepared by a group established in a third country, the application shall be lodged with the Commission, either directly or via the authorities of the third country concerned.

…'

9. Article 50 ('Scrutiny by the Commission and publication for opposition') reads:

'1. The Commission shall scrutinise by appropriate means any application that it receives pursuant to Article 49, in order to check that it is justified and that it meets the conditions of the respective scheme. This scrutiny should not exceed a period of six months. Where this period is exceeded, the Commission shall indicate in writing to the applicant the reasons for the delay.

The Commission shall, at least each month, make public the list of names for which registration applications have been submitted to it, as well as their date of submission.

…'

10. Article 52 ('Decision on registration') states:

'1. Where, on the basis of the information available to the Commission from the scrutiny carried out pursuant to the first subparagraph of Article 50(1), the Commission considers that the conditions for registration are not fulfilled, it shall adopt implementing acts rejecting the application. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

2. If the Commission receives no notice of opposition or no admissible reasoned statement of opposition under Article 51, it shall adopt implementing acts, without applying the procedure referred to in Article 57(2), registering the name.

3. If the Commission receives an admissible reasoned statement of opposition, it shall, following the appropriate consultations referred to in Article 51(3), and taking into account the results thereof, either:

(a) if an agreement has been reached, register the name by means of implementing acts adopted without applying the procedure referred to in Article 57(2), and, if necessary, amend the information published pursuant to Article 50(2) provided such amendments are not substantial; or

(b) if an agreement has not been reached, adopt implementing acts deciding on the registration. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 57(2).

4. Acts of registration and decisions on rejection shall be published in the *Official Journal of the European Union*.'

II. Background

11. The background to the dispute is set out in paragraphs 4 to 9 of the judgment under appeal, which I summarise below.

12. The names 'Jambon sec de Corse'/'Jambon sec de Corse – Prisuttu', 'Lonzo de Corse'/'Lonzo de Corse – Lonzu' and 'Coppa de Corse'/'Coppa de Corse – Coppa di Corsica' were registered on 28 May 2014 as PDOs by means of three implementing regulations.[7]

13. In December 2015, the Consortium des Charcutiers Corses lodged seven applications for registration as PGIs with the French national authorities, in accordance with Regulation No 1151/2012. The seven applications concerned the following names: 'Jambon sec de l'Île de Beauté', 'Coppa de l'Île de Beauté', 'Lonzo de l'Île de Beauté', 'Saucisson sec de l'Île de Beauté', 'Pancetta de l'Île de Beauté', 'Figatelli de l'Île de Beauté' and 'Bulagna de l'Île de Beauté'.

14. On 20 April 2018, the ministre de l'Agriculture et de l'Alimentation (Minister for Agriculture and Food, France) and the ministre de l'Économie et des Finances (Minister for the Economy and Finance, France) issued seven decrees approving the seven corresponding specifications, with a view to forwarding them to the Commission for approval.

15. On 27 June 2018, before the Conseil d'État (Council of State, acting as the Supreme Court in administrative matters, France), the union holding[8] the specifications of the PDOs 'Jambon sec de Corse – Prisuttu', 'Coppa de Corse – Coppa di Corsica' and 'Lonzo de Corse – Lonzu' applied for the annulment of the decrees of 20 April 2018 concerning the approval of the specifications of the names 'Jambon sec de l'Île de Beauté', 'Coppa de l'Île de Beauté' and 'Lonzo de l'Île de Beauté'. In the opinion of that union, the term 'Île de Beauté', in particular, imitated or evoked the term 'Corse' and therefore caused confusion with the names already registered as PDOs.

16. On 17 August 2018, the French authorities forwarded the seven applications for registration of the names of the Corsican cured meats as PGIs to the Commission.

17. As regards the applications for registration as PGIs of the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté', the Commission sent two letters, on 12 February 2019 and 24 November 2020, to the French authorities seeking clarification, in particular with regard to their possible ineligibility.

18. The national authorities replied that they considered that the two groups of products (that is to say, the registered PDOs and the applications for protection as PGIs) were clearly dissimilar as regards the products and that the names appeared to them to be sufficiently distinct.

[7] Commission Implementing Regulation (EU) No 580/2014 of 28 May 2014 entering a name in the register of protected designations of origin and protected geographical indications (Lonzo de Corse/Lonzo de Corse – Lonzu (PDO)) (OJ 2014 L 160, p. 21), Commission Implementing Regulation (EU) No 581/2014 of 28 May 2014 entering a name in the register of protected designations of origin and protected geographical indications (Jambon sec de Corse/Jambon sec de Corse – Prisuttu (PDO)) (OJ 2014 L 160, p. 23), and Commission Implementing Regulation (EU) No 582/2014 of 28 May 2014 entering a name in the register of protected designations of origin and protected geographical indications (Coppa de Corse/Coppa de Corse – Coppa di Corsica (PDO)) (OJ 2014 L 160, p. 25) ('the regulations registering the PDOs').

[8] 'Salameria Corsa' is the union responsible for defending the interests of Corsican cured meat producers covered by the PDOs registered in 2014 ('the union administrating the PDOs').

19. By judgment of 19 December 2019, (relating to the name 'Jambon sec de l'Île de Beauté' (PGI)) and two judgments of 13 February 2020, (relating to the names 'Coppa de l'Île de Beauté' (PGI) and 'Lonzo de l'Île de Beauté' (PGI) respectively), the Conseil d'État (Council of State) rejected the three applications made by the union administrating the PDOs.

20. In particular, the Conseil d'État (Council of State) held that '… the applicants are not entitled to maintain that the contested decree infringes the provisions … of Article 13(1)(b) of Regulation [No 1151/2012]' (paragraph 5 of the three judgments of the Conseil d'État (Council of State)).

21. After examining the applications for registration of the seven PGIs for Corsican cured meats, the Commission refused the registration of three of them in Implementing Regulation 2021/1879. It did, however, approve the other four applications forwarded by the French authorities. [9]

III. Procedure before the General Court

22. On 20 January 2022, the Consortium des Charcutiers Corses and various associated producers brought an action before the General Court seeking the annulment of the decision at issue.

23. On 12 July 2023, the General Court dismissed the action for annulment and ordered the applicants to pay the costs.

24. The applicants had relied on two pleas in law: (a) that the Commission had exceeded its powers; and (b) that the national authorities and the Conseil d'État (Council of State) had established sufficiently that the three applications for registration complied with Articles 7 and 13 of Regulation No 1151/2012.

25. The reasons which, according to the General Court, led to the dismissal of the action were, in summary, as follows:

– The Commission, which must refuse registration under Article 52(1) of Regulation No 1151/2012 if it considers that the conditions for registration are not fulfilled, cannot be required to allow the registration of a name if it deems its use in trade to be unlawful.

– The issue of evocation is related to eligibility for registration under Article 7(1)(a) of Regulation No 1151/2012. That provision, read in conjunction with Article 13(1)(b) of that same regulation, constitutes a valid legal basis for refusing to register a name. [10]

– Even if the national authorities consider, when forwarding it to the Commission, that an application fulfils the conditions laid down by Regulation No 1151/2012, the Commission is not bound by the assessment of those authorities.

– The Commission, when registering a name as a PDO or PGI, has an independent discretion, since it is required to check, under Article 50 of Regulation No 1151/2012, that the conditions for registration are fulfilled.

[9] Commission Implementing Regulation (EU) 2023/1546 of 26 July 2023 entering a name in the register of protected designations of origin and protected geographical indications 'Pancetta de l'Île de Beauté / Panzetta de l'Île de Beauté' (PGI), 'Saucisson sec de l'Île de Beauté / Salciccia de l'Île de Beauté' (PGI), 'Bulagna de l'Île de Beauté' (PGI) and 'Figatelli de l'Île de Beauté / Figatellu de l'Île de Beauté' (PGI) (OJ 2023 L 188, p. 24).

[10] The judgment under appeal, paragraph 40.

– In the case of the Corsican PGIs, the Commission had carried out an exhaustive examination of the appellants' applications.

– The Commission did not exceed its powers in rejecting the applications for PGIs forwarded by the French authorities.[11] The Commission's discretion differs depending on whether it is the first stage of the procedure (in which the documents making up the application dossier, which the national authorities may forward to the Commission, are collected) or the second stage of that procedure (its own examination of that application).

– While, in the first of those two stages, the Commission has only 'limited, if any' discretion, that is not the case with regard to its decision to register a name as a PDO or PGI, in the light of the conditions of eligibility for registration laid down in Article 7(1)(a) of Regulation No 1151/2012, read in conjunction with Article 13(1)(b) of that regulation. In the latter case, the Commission has an independent discretion.

– The Commission has not made any error of assessment in deeming the three rejected PGIs to evoke the names protected by the earlier PDOs, once it is accepted that the terms 'Corse' and 'Île de Beauté' are synonyms and designate the same geographical area. The conceptual proximity of the two terms is effectively proved.

IV. Procedure before the Court of Justice

26. On 19 September 2023, the Consortium des Charcutiers Corses and the associated producers brought this appeal.

27. The appellants claim that the Court of Justice should:

– set aside the judgment under appeal;

– annul the decision at issue;

– order the Commission to pay the costs both at first instance and on appeal.

28. The Commission contends that the Court of Justice should:

– dismiss the appeal;

– order the appellants to pay the costs.

29. The appellants put forward four grounds of appeal:

– Infringement of Articles 7 and 13 of Regulation No 1151/2012.

– Infringement of Articles 49, 50 and 52 of Regulation No 1151/2012.

– Infringement of Article 50 of Regulation No 1151/2012 and failure to observe the general principle of good administration.

[11] The judgment under appeal, paragraphs 59 to 61.

– Infringement of Articles 7 and 13 of Regulation No 1151/2012 and failure to comply with the obligation to state reasons, in the context of the assessment made by the General Court.

30. The Court of Justice considers it necessary to deliver an Opinion in respect of the first two of those four grounds. I shall examine them beginning with the second, which, from a logical perspective, seems to take precedence, as it concerns the powers of the Commission, rather than the substance of its decision.

V. The second ground of appeal

A. Arguments of the parties

31. The appellants complain that the General Court infringed the division of powers between the national authorities and the Commission, provided for in Articles 49 and 50 of Regulation No 1151/2012, for the procedure to register a PGI. [12]

32. In their opinion, the Commission has limited discretion in the registration procedure and is only free to verify the formal correctness of the PGI application forwarded by the national authorities and to examine whether those authorities have made a manifest error in the national stage of the procedure.

33. The Commission contests that reasoning and reaffirms the appropriateness of the reasoning given and the solution decided on by the General Court in the judgment under appeal.

B. Assessment

34. A PGI is registered by means of a composite administrative procedure, involving the competent authorities of the Member State concerned and the Commission. That fact is emphasised in recital 58 of Regulation No 1151/2012. [13]

35. The procedure for registering PGIs [14] consists of a first *national stage*, regulated by Article 49 of Regulation No 1151/2012. It begins with the application for registration of the PGI, which the group of producers concerned submits to the authorities of the Member State where the production area is located geographically.

36. The national authority must scrutinise the application by appropriate means in order to check that it is justified and meets the substantive conditions laid down by Regulation No 1151/2012. [15] The Member State ensures adequate publication of the application and a reasonable period within which any natural or legal person having a legitimate interest and established or resident on its territory may lodge an opposition. [16]

[12] The appellants focus their criticism on paragraphs 41 to 61 of the judgment under appeal.

[13] Transcribed in point 6 of this Opinion.

[14] This procedure also applies to significant amendments to the product specification for the PGI and to the cancellation of its registration.

[15] Article 49(2) of Regulation No 1151/2012.

[16] Article 49(3) of Regulation No 1151/2012.

37. The national authorities will assess any statements of opposition received and determine whether the application satisfies the requirements of Regulation No 1151/2012. If their assessment is positive, they will give a favourable decision. They must also ensure that the specification on which they have based their favourable decision is published and may be accessed electronically. [17] Furthermore, the Member State is to ensure that its favourable decision is made public and that any natural or legal person having a legitimate interest has the opportunity to appeal. [18]

38. If the decision of the national authority is favourable, the national stage concludes with the application dossier relating to the PGI being forwarded to the Commission, together with any admissible oppositions received. [19]

39. In the case of applications for registration of PGIs coming from third States, as is logical, there is no national stage. The procedure takes place before the Commission, which holds all of the decision-making power. [20]

40. The *European stage* of the procedure to register a PGI, regulated by Article 50 of Regulation No 1151/2012, begins with scrutiny of the application, which is to be carried out by the Commission on receipt of the national decision, in order to check that the application is justified and meets the conditions laid down for PGIs.

41. If, as a result of that scrutiny (which must not exceed a period of six months), the Commission considers that 'the conditions for registration are not fulfilled', it must reject the application for registration of the PGI. [21] Conversely, if it accepts it, it will publish the single document and the reference to the publication of the product specification in the Official Journal. [22]

42. Following publication in the Official Journal, the authorities of a Member State or of a third country, or a natural or legal person having a legitimate interest and established in a third country, may notify their opposition. The Commission forwards that notice of opposition to the authority of the Member State that lodged the application [23] and a procedure is initiated if that opposition is confirmed. [24]

43. If it does not receive any notice of opposition (or any admissible reasoned statement of opposition), the Commission will adopt the decision registering the PGI. The Commission will proceed in the same way if, having received an admissible reasoned statement of opposition, an agreement is reached following the consultations referred to in Article 51(3) of Regulation No 1151/2012. If no agreement is reached, the Commission will, as appropriate, adopt the implementing acts to register the PGI. [25]

17 Article 49(4), first and third subparagraphs, of Regulation No 1151/2012.

18 Article 49(4), second subparagraph, of Regulation No 1151/2012.

19 That is, those coming from a natural or legal person that has legally marketed the product in question, using the names concerned continuously for at least the five preceding years (Article 49(4), first subparagraph, of Regulation No 1151/2012).

20 Article 49(5) of Regulation No 1151/2012.

21 Article 52(1) of Regulation No 1151/2012.

22 Article 50(1) and (2) of Regulation No 1151/2012.

23 Article 51(1), fourth subparagraph, of Regulation No 1151/2012.

24 The notice of opposition must be accompanied by a reasoned statement of opposition, the admissibility of which will be examined by the Commission. If it considers it admissible, the Commission will invite the authority or person that lodged the opposition and the national authority that lodged the application to engage in appropriate consultations for a reasonable period, which is not to exceed three months (Article 51(2) and (3) of Regulation No 1151/2012).

25 Article 52(2) and (3) of Regulation No 1151/2012.

44. In either case, the acts to register the PGI or the decisions refusing its registration will be published in the Official Journal. [26]

45. The case-law of the Court of Justice has had the opportunity to define the characteristics of this composite administrative procedure. Unlike in the case of the composite procedures relating to the banking union [27] (where the national stage is simply preparatory to the European stage, in which the EU institution or body holds the decision-making power), the national stage of the procedure to register a PGI is substantive in its own right, as the national authorities adopt decisions with effects for third parties (and which are not simply preparatory), subject to supervision by the national courts.

46. In the judgment in *GAEC Jeanningros*, [28] the Court of Justice consolidated its case-law on the national stage of PGI registration procedures. It emphasised, in particular, that the authorities of the Member States concerned enjoy a specific and autonomous decision-making power during that national stage.

47. According to the Court of Justice, 'Regulation No 1151/2012 creates a system of division of powers, in the sense that, in particular, the decision to register a name as a protected geographical indication may be made by the Commission only if the Member State concerned has submitted to it an application for that purpose and that such an application may be made only if that Member State has checked that the application was justified. That system of division of powers is attributable particularly to the fact that registration of a protected geographical indication assumes that it has been verified that a certain number of conditions have been met, which requires, to a large extent, detailed knowledge of matters particular to that Member State, which the competent authorities thereof are best placed to check'. [29]

48. In accordance with that case-law, the national authority has control of the procedure for registering a PGI, which is justified, inter alia, [30] for the following reasons:

– Groups of producers must commence that procedure before the competent national authority of the Member State in whose territory the PGI is situated. Such groups are not entitled to submit their application directly to the Commission;

– The national authority examines whether the proposal is compatible with the substantive requirements of Regulation No 1151/2012, since it is that authority which has the more detailed knowledge needed to check the specific features of the products aspiring to the protection of a PGI.

[26] Article 52(4) of Regulation No 1151/2012.

[27] See, in particular, the judgments of 19 December 2018, *Berlusconi and Fininvest* (C-219/17, EU:C:2018:1023), and of 3 December 2019, *Iccrea Banca* (C-414/18, EU:C:2019:1036), as well as the Opinions of 27 June 2018 (C-219/17, EU:C:2018:502), and of 9 July 2019 (C-414/18, EU:C:2019:574), which I delivered in those cases. See, also, Christina Eckes, C., D'Ambrosio, R., 'Composite administrative procedures in the European Union', *Legal Working Paper Series*, No 20, November 2020, and Di Bucci, V., 'Procedural and judicial implications of composite procedures in the banking union', in Zilioli, C., Wojcik, K.-P., *Judicial Review in the European Banking Union*, Edward Elgar, 2021, pp. 114 to 129.

[28] Judgment of 29 January 2020, *GAEC Jeanningros* (C-785/18, EU:C:2020:46; 'the judgment in *GAEC Jeanningros*'), paragraphs 23 to 27. See, also, the judgments of 6 December 2001, *Carl Kühne and Others* (C-269/99, EU:C:2001:659), and of 2 July 2009, *Bavaria and Bavaria Italia* (C-343/07, EU:C:2009:415).

[29] Judgment of 15 April 2021, *Hengstenberg* (C-53/20, EU:C:2021:279), paragraph 37, citing the judgment in *GAEC Jeanningros*, paragraph 24.

[30] The Member States may, in their domestic law, make provision for transitional protection of PGIs at national level, limited to their territory, from the end of the national stage of the registration procedure and until the Commission gives its decision regarding the application. That fact reflects the national authority's control of the national stage of those composite procedures.

– The authority of the Member State has competence to approve or reject the application for registration of the PGI in the national stage of the procedure. It therefore holds the *key* to the opening of the subsequent stage of the procedure, by forwarding the application to the Commission. The Commission is unable to register a PGI without a favourable decision on the part of the national authority.

– The national authority may withdraw the application for registration of the PGI submitted to the Commission before the Commission registers it.

49. As control of the national stage of that procedure lies with the national authority, its decisions are not simply acts preparatory to the subsequent decision of the Commission, but rather they are substantive in their own right and produce legal effects for those applying for the PGI. It is for that reason that the Court of Justice accepts the supervision by national courts of the decisions of national authorities regarding the registration of a PGI. [31]

50. According to the appellants, the substantive nature of the national stage of the procedure *weakens* its European stage to such an extent that the Commission should confine itself to checking that the dossier forwarded by the national authority is complete and to verifying that that national authority has not made a manifest error of assessment.

51. Based on that premiss, given that, in the judgment under appeal, the General Court does not consider the European stage of the procedure to afford the Commission such limited scope for decision-making, the appellants assert that it has made an error of law in its interpretation of Articles 49 and 50 of Regulation No 1151/2012.

52. In my view, however, the General Court has not made any error of law.

53. The Commission scrutinises the applications forwarded by the national authorities 'to ensure that there are no manifest errors and that Union law and the interests of stakeholders outside the Member State of application have been taken into account.' [32]

54. Article 50(1) of Regulation No 1151/2012 confirms that the Commission 'shall scrutinise by appropriate means any application that it receives pursuant to Article 49, in order to check that it is justified and that it meets the conditions of the respective scheme.' Based on that scrutiny, the Commission may reject the application where it 'considers that the conditions for registration are not fulfilled' (Article 52(1) of that regulation).

55. While Regulation No 1151/2012 does not define the concept of scrutiny 'by appropriate means', the wording of the provisions of that regulation so far mentioned emphasises that, in carrying it out, the Commission is not bound by the assessment of the national authorities and enjoys an independent discretion. The General Court correctly held that to be the case in the judgment under appeal (paragraph 44).

[31] The judgment in *GAEC Jeanningros*, paragraphs 31 and 37. See the commentary on that case-law by Brito Bastos, F., 'Judicial Annulment of National Preparatory Acts and the Effects on Final Union Administrative Decisions: Comments on the Judgment of 29 January 2020, Case C-785/18 Jeanningros EU:C:2020:46', *Review of European Administrative Law*, 2021, No 2, pp. 109 to 117.

[32] Recital 58 of Regulation No 1151/2012.

56. In the European stage of the procedure, the Commission has to verify three elements, each of which has its own logic:

– The absence of manifest errors in the processing of the application for registration of the PGI on the part of the authorities of the Member State.

– Respect for the interests of any parties involved and concerned who do not belong to the Member State of the application. [33]

– Respect, in the application for registration of the PGI forwarded by the national authorities, for the applicable provisions of EU law.

57. The Commission, then, enjoys the power to check for manifest errors which the national authorities may have made *in the national stage* of the procedure to register a PGI. It is logical that that should be the case, because those authorities have substantive decision-making power in that stage, under the control of the national courts.

58. The reference by the Court of Justice (the judgment in *GAEC Jeanningros*, paragraph 25) to the fact that the Commission has 'only limited, if any, discretion' in procedures for amendments to a product specification and for the registration of a PGI relates, as the General Court correctly observed, to the national stage of the procedure. [34] The reasoning set out in other judgments of the Court of Justice must be understood as having the same meaning. [35]

59. However, *in the European stage* of those procedures, as the General Court states, [36] the Commission has an independent discretion and is not bound by the assessment of the national authorities. It may grant or refuse the registration of PGIs on an assessment of whether or not the required conditions are fulfilled.

60. The autonomous decision-making power of the Commission in the European stage of that procedure goes beyond merely checking for formal and manifest errors in the processing of the application at the national level. The Commission must undertake a complete analysis of the application for registration approved by the national authorities in order to verify that it complies with the requirements of Regulation No 1151/2012.

61. That complete analysis may lead the Commission to make a different decision from that made by the national authorities. In part, that is what has occurred in this case. [37]

62. The Commission's power to process and decide on transnational oppositions, lodged by interested parties from other Member States in relation to the registration of a PGI (Article 51 of Regulation No 1151/2012), bears out its autonomous power to decide regarding applications for registration. [38]

[33] Which translates into the processing, by the Commission, of transnational oppositions by means of the procedure set out in Article 51 of Regulation No 1151/2012.

[34] The judgment under appeal, paragraph 59.

[35] Judgments of 6 December 2001, *Carl Kühne and Others* (C-269/99, EU:C:2001:659), paragraphs 57 and 58, and of 2 July 2009, *Bavaria and Bavaria Italia* (C-343/07, EU:C:2009:415), paragraphs 70 and 71.

[36] The judgment under appeal, paragraph 44.

[37] As I have already explained, the Commission rejected only three of the seven applications for PGIs forwarded by the French authorities.

[38] The Commission, moreover, holds all of the decision-making power in relation to applications for the registration of PGIs coming from third countries, for which there is no national stage of the registration procedure (Article 49(5) of Regulation No 1151/2012).

63. Equally, the uniform application of the conditions for registration of PGIs, laid down by Regulation No 1151/2012, requires that, in the European stage of the procedure, the Commission should enjoy autonomous power to establish the uniform practice to be followed by the authorities of the Member States. If it did not have that autonomous decision-making power, there would be a significant risk of the conditions for registration of PGIs being applied differently in the Member States.

64. The European stage of the procedure would not be substantive in its own right if the Commission were obliged to follow the assessments of the national authorities and could not reject applications for registration which those authorities had approved. The procedure for the registration of PGIs established by Regulation No 1151/2012 would cease to be a true composite procedure if its European stage were weakened by drastically reducing the powers of the Commission.

65. Accordingly, like the General Court, I consider the Commission to be vested with the power to verify that the application for registration of the PGI forwarded by the national authorities complies with the applicable provisions of EU law. The second ground of appeal must, therefore, be rejected.

VI. The first ground of appeal

A. Arguments of the parties

66. The appellants complain that the General Court has unlawfully added to the conditions for the registration of a PGI, defined in Articles 5, 6 and 7 of Regulation No 1151/2012, the requirement that the name whose registration as a PGI is sought should not infringe the protection against evocation, established by Article 13(1)(b) of that regulation.

67. In their opinion, the judgment under appeal correctly observes (paragraphs 29 and 30) that Article 13 of Regulation No 1151/2012 does not relate to registration, but rather to the scope of the protection of registered names, and that, accordingly, that provision 'cannot, in itself, constitute the legal basis for the rejection of an application for registration'.

68. Nevertheless, the General Court strayed from that conclusion and made various errors of law in paragraphs 32 to 40 of the judgment under appeal:

– First, it accepts that the Commission is competent to apply Article 13 of Regulation No 1151/2012, when paragraph 3 of that provision reserves that power to the Member States.

– Second, Article 7 of Regulation No 1151/2012 solely requires the name to be used in trade or in common language, which represents an *objective* factual element the legality of which is not subject to the *subjective* assessment of the Commission. Article 13 of that regulation does not relate to the registration procedure.

– Third, contrary to what the General Court (paragraph 38 and 39 of the judgment under appeal) accepts, the Commission lacks the resources and in-depth knowledge of local traditions, consumption habits, history and culture and the facts contained in the dossier, which the national authorities do have. Those very authorities had ruled out the risk of evocation in this case.

69. The Commission contests those arguments and defends the combined application of Article 7(1)(a) and Article 13(1)(b) of Regulation No 1151/2012, which the General Court has endorsed. Those articles were applied in combination for the first time due to the particular characteristics of the situation which had occurred in relation to the applications for registration of the PGIs at issue.

B. Assessment

70. The particular characteristics of the situation to which the Commission refers are the result of a sequence of events which it is worth recalling:

– From 28 May 2014, the names 'Jambon sec de Corse'/'Jambon sec de Corse – Prisuttu', 'Lonzo de Corse'/'Lonzo de Corse – Lonzu' and 'Coppa de Corse'/'Coppa de Corse – Coppa di Corsica' were registered as PDOs by means of the corresponding regulations.

– Those regulations granted certain undertakings established in Corsica and using those names a transitional period, expiring on 27 April 2017, in order to continue producing products with different characteristics from those laid down in the product specification.

– That allowed the producers concerned to adapt to the requirements of the specification approved at EU level or, failing that, to change the sales name used.

– During the transitional period, those undertakings created in 2014, and began to market in 2015, products with the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté'.

– The French authorities tolerated the coexistence, between 2015 and April 2017, of the three PDOs registered in 2014 with the three names referring to the same types of Corsican cured meats.

– The undertakings benefiting from the transitional period submitted applications for the registration of 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' as PGIs to the French authorities and those applications were forwarded to the Commission on 17 August 2018, that is, at a point in time when those names could no longer be used legally, the transitional period having ended.

– The French authorities approved those three applications for registration, believing them not to constitute an evocation of the registered PDOs.[39] In that regard, they adduced that: (i) the two groups of products (that is, the registered PDOs and the candidate PGIs) were clearly different as regards the raw materials (breeds, carcass weight), descriptions, specifications, production volumes and sale prices; (ii) the names and their corresponding pronunciations would be sufficiently distinct and there would be no homonymy, as the logos in question are

[39] See Implementing Decision 2021/1879, recitals 13 and 16. In its judgment of 19 December 2019, regarding the name 'Jambon sec de l'Île de Beauté' (PGI), and in its two judgments of 13 February 2020, regarding, respectively, the names 'Coppa de l'Île de Beauté' (PGI) and 'Lonzo de l'Île de Beauté' (PGI), the Conseil d'État (Council of State) dismissed the three claims brought by the union administrating the PDOs and accepted the arguments of the French authorities for registering those names as PGIs.

different (PDO and PGI);[40] (iii) in view of the differences between the products and the names, and in accordance with precedent, consumers would be perfectly aware of the difference in quality between the product registered as a PDO and that marketed with the name 'Île de Beauté'; (iv) the three names containing the term 'Île de Beauté' and the three corresponding registered names containing the term 'Corse', which cover the same geographical area, would be 'sufficiently distinctive'.

– However, in the decision at issue, the Commission rejected the arguments of the French authorities and refused the registration of the three PGIs, considering the names in question to be potentially evocative of names that had already been registered for a similar product, making it impossible for them to meet the eligibility criteria for registration laid down in Article 7(1)(a) of Regulation (EU) No 1151/2012.

– In that regard, the Commission considers the names of the three applications for PGIs to have been used in trade or in common language in a manner infringing Article 13(1)(b) of Regulation No 1151/2012. The applications, therefore, do not comply with the eligibility criteria laid down in Article 7(1)(a) of that regulation.

71. The Commission's reasoning, upheld by the General Court in the judgment under appeal, seems correct to me and I do not agree with the arguments of the appellants in support of their first ground of appeal.

72. Article 7(1)(a) of Regulation No 1151/2012 provides that PGIs must comply with a product specification including, at least, among other elements, 'the name to be protected as a designation of origin or geographical indication, as it is used, whether in trade or in common language, and only in the languages which are or were historically used to describe the specific product in the defined geographical area'.

73. I have already reiterated that, in the European stage of the procedure to register a PGI, it is the responsibility of the Commission to reject the application if the necessary conditions are not met. One of those conditions is that the product specification should include a product name the use of which in trade is lawful.

74. The use of a name will be unlawful if it infringes the protection against evocation provided for in Article 13(1)(b) of Regulation No 1151/2012. In accordance with that provision, 'registered names shall be protected against … any misuse, imitation or evocation, even if the true origin of the products or services is indicated …'

75. As the judgment under appeal correctly indicates (paragraphs 36 and 37), to allow the registration of a PGI which evokes a name already registered as a PDO would render ineffective the protection provided for in Article 13(1)(b) of Regulation No 1151/2012. Once that name was registered as a PGI, the name previously registered as a PDO would no longer enjoy the protection accorded by that provision in relation to that PGI. Therefore, the product specification for an application for registration of a PGI cannot include a name which evokes the name of a previously registered PDO.

[40] The French authorities noted that there are comparable cases of similar names relating to the same geographical area: the registered wine names 'Île de Beauté' (PDO) and 'Corse' (PGI), which are synonyms and relate to the same geographical area, and the registered agricultural names 'Aceto balsamico tradizionale di Modena' (PDO) and 'Aceto Balsamico di Modena' (PGI), which are almost entirely homonymous.

76. The appellants maintain that it is the national authorities, and not the Commission, who are responsible for checking for infringements of Article 13 of Regulation No 1151/2012. I do not share that view, since, in my opinion:

– Article 13(3) of Regulation No 1151/2012 merely states that the Member States should take the measures necessary to prevent or stop the unlawful use of PDOs and PGIs, which includes the prohibition of names which evoke them. [41]

– However, that provision contains nothing to prevent the Commission from suppressing the use of names evocative of previously registered names.

– The Commission must act against evocation in order to prevent the misuse of PDOs and PGIs, not only in the interests of consumers, but also in the interests of producers who have striven to guarantee the qualities expected of products lawfully bearing such indications. [42]

– That interpretation is consistent with recital 19 of Regulation No 1151/2012: uniform respect throughout the Union for the intellectual property rights related to protected names is a priority.

77. For the Court of Justice, 'the system of protection of PDOs and PGIs is essentially intended to assure consumers that agricultural products with a registered name have, because of their provenance from a particular geographical area, certain specific characteristics and, accordingly, offer a guarantee of quality due to their geographical provenance, with the aim of enabling agricultural operators to secure higher incomes in return for a genuine effort to improve quality, and of preventing improper use of those designations by third parties seeking to profit from the reputation which those products have acquired by their quality'. [43]

78. The prohibition on evocation, contained in Article 13(1)(b) of Regulation No 1151/2012, aims to avoid producers who are not covered by registered PDOs and PGIs improperly taking advantage of those PDOs and PGIs.

79. According to the Court of Justice, 'the concept of "evocation" covers a situation in which the sign used to designate a product incorporates part of a protected geographical indication or a PDO so that when the consumer is confronted with the name of the product in question, the image triggered in his or her mind is that of the product whose indication or designation is protected'. [44] The essential thing is that the consumer establishes a sufficiently direct and unequivocal link between the term used to designate the product in question and the PGI.

[41] See the judgment of 14 July 2022, *Commission* v *Denmark (PDO Feta)* (C-159/20, EU:C:2022:561), in which it was held that, by failing to prevent or stop the use by Danish dairy producers of the PDO 'Feta' to designate cheese which does not comply with the product specification for that PDO, the Kingdom of Denmark had failed to fulfil its obligations under Article 13(3) of Regulation No 1151/2012.

[42] Judgments of 15 April 2021, *Hengstenberg* (C-53/20, EU:C:2021:279), paragraph 43, and of 7 June 2018, *Scotch Whisky Association* (C-44/17, EU:C:2018:415), paragraph 38.

[43] Judgments of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043), paragraph 35; of 9 September 2021, *Comité Interprofessionnel du Vin de Champagne* (C-783/19, EU:C:2021:713), paragraph 49; and of 14 July 2022, *Commission* v *Denmark (PDO Feta)* (C-159/20, EU:C:2022:561), paragraph 56.

[44] Judgments of 9 September 2021, *Comité Interprofessionnel du Vin de Champagne* (C-783/19, EU:C:2021:713), paragraph 55; of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043), paragraph 26; and of 7 June 2018, *Scotch Whisky Association* (C-44/17, EU:C:2018:415), paragraph 44.

80. The case-law concerning the concept of 'evocation'[45] has been consolidated, primarily, in responding to requests for a preliminary ruling relating to trade marks and names protected by PDOs and PGIs. Decisions in appeals brought against judgments of the General Court which, in turn, interpret (and apply) that concept are less common.

81. The Court of Justice has held that assessments made by the General Court accepting or rejecting that a distinctive new sign (an application for a PDO or PGI, as applicable) evokes a name that is already protected are 'factual assessments' and cannot, in principle, be criticised on appeal.[46]

82. Starting from that premiss, there is no basis for accepting the appellants' criticism of the General Court for having upheld the Commission's view regarding the existence of evocation in this case. The point in question is one of a factual nature, on which the General Court has the last word and which cannot be reviewed on appeal.

83. If the Court of Justice were to allow the reasoning on that point to be reviewed on appeal, I would agree with the General Court in its assessment that the evocation on which the decision at issue was based did exist.

84. The names at issue, used in trade since 2015, refer to the same geographical area (the island of Corsica) as the PDOs. The syntagm 'Île de Beauté' is a customary expression which, for a French consumer, refers to the island of Corsica.[47] Even though the names in question are not wholly or partially homonymous,[48] there is synonymy, and evocation, which does not require phonetic similarity, cannot be excluded.

85. The qualitative differences between the products for which the PGIs are sought and those already covered by the PDOs are not made evident on the labelling and are only known by a particularly well-informed public. Those differences suggest that the products covered by the PGIs are of a lower quality and that the link with the area of production is weaker.[49] The perception of consumers is not sufficient to assert the distinctive autonomy of the PGIs applied for, in relation to the PDOs registered, without being supported by objective studies and surveys.[50]

86. Finally, the appellants submit that the judgment under appeal prevents the coexistence of different types of names for similar products from the same region.

[45] See, inter alia, the judgments of 7 June 2018, *Scotch Whisky Association* (C-44/17, EU:C:2018:415), paragraphs 45, 51 and 53; of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043), paragraph 26; and of 9 September 2021, *Comité Interprofessionnel du Vin de Champagne* (C-783/19, EU:C:2021:713), paragraphs 58 to 60.

[46] Judgment of 14 September 2027, *EUIPO* v *Instituto dos Vinhos do Douro e do Porto* (C-56/16 P, EU:C:2017:693), paragraph 126.

[47] The decision at issue, in recital 9, states that 'Île de Beauté' is widely used to refer to Corsica, particularly on tourism areas, including non-French ones, and a large bibliography confirms that consumers regard the two terms as synonyms, meaning that 'Île de Beauté' 'evokes' Corsica, and vice versa. See, also, the judgment under appeal, paragraphs 87, 88 and 94.

[48] Article 6(3) of Regulation No 1151/2012 prohibits the registration of names homonymous with others already registered on eAmbrosia.

[49] The judgment under appeal, paragraphs 80 and 81, and recital 19 of the decision at issue.

[50] The French authorities and the judgments of the Conseil d'État (Council of State) make reference to a study by the Consortium des Charcutiers Corses, submitted with the applications for the PGIs, on the differences between the products to be covered by those PGIs and those protected by the PDOs. The judgment under appeal (paragraph 82) refers to another study, provided by the same Consortium and carried out, at its request, in May 2021, on how consumers perceive the differences between the PDOs and PGIs for Corsican cured meats, which the French authorities could not take into account. The General Court's analysis of the content of that study (which, since it constitutes the examination of a piece of evidence, is not, in principle, able to be reviewed on appeal) dismisses the notion that it may be deduced from that study that a certain percentage of consumers is aware of such differences.

87. Although the General Court did not rule on that claim explicitly in the judgment under appeal, it did examine cases of coexistence between PDOs and PGIs [51] and I am unable to find any error of law in its reasoning in that regard. The examples of coexistence between PDOs and PGIs mentioned by the appellants were accepted under the provisions of legislation which has now been repealed (PDO 'Corse/Vin de Corse' and PGI 'Île de Beauté') or they preceded the entry into force of the European Union's rules on the protection of geographical indications (PDO 'Aceto balsamico tradizionale di Modena' and PGI 'Aceto Balsamico di Modena').

88. Under the provisions of Regulation No 1151/2012, the coexistence of two similar names, for the same products and in the same region, is to be ruled out, in principle, because a subsequent PGI would weaken the protection which that regulation offers a prior PDO, eroding its reputation.

89. In conclusion, the first ground of appeal must also be rejected.

VII. Costs

90. Given that this Opinion deals with only two of the grounds of appeal, without considering the others, I cannot comment on whether the appellants should be required to bear the costs.

VIII. Conclusion

91. I propose, then, that the Court of Justice should dismiss the first and second grounds of the appeal brought against the judgment of the General Court of 12 July 2023, *Cunsorziu di i Salamaghji Corsi – Consortium des Charcutiers Corses and Others v Commission* (T-34/22, EU:T:2023:386).

[51] The judgment under appeal, paragraphs 100 to 108.