Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 26 September 2019[1]

Case C-785/18

GAEC Jeanningros
v
Institut national de l'origine et de la qualité (INAO),
Ministre de l'Agriculture et de l'Alimentation,
Ministre de l'Économie et des Finances,
intervener:
Comité interprofessionnel de gestion du Comté

(Request for a preliminary ruling from the Conseil d'État (Council of State, France))

(Reference for a preliminary ruling — Agriculture — Protection of geographical indications and designations of origin for agricultural products and foodstuffs — Amendment of a product specification — Major amendment — Minor amendment — Action before national courts contesting application for a minor amendment — National case-law dismissing the action once the European Commission has given its decision — Protected designation of origin 'Comté')

1. Under Regulation (EU) No 1151/2012,[2] a protected designation of origin ('PDO') must comply with a specification which includes its name, a description of the product, the method of obtaining the product, a definition of the geographical area and other relevant details.

2. It is possible for that specification to be amended using composite administrative procedures, similar to those applicable to the initial registration of PDOs, in which both the national authorities and the European Commission are involved. The rules governing those procedures are laid down in a delegated regulation[3] and an implementing regulation[4] and they differ slightly depending on the significance of the amendments concerned.

3. The question referred for a preliminary ruling by the Conseil d'État (Council of State, France) will enable the Court of Justice to clarify the role of courts which are called upon to review the lawfulness of the decisions of national authorities given in those procedures.

1 Original language: Spanish.

2 Regulation 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).

3 Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules (OJ 2014 L 179, p. 17).

4 Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ 2014 L 179, p. 36).

4. In particular, it will be necessary to determine whether, where the Commission has granted an application for a 'minor' amendment of a PDO specification which has been approved by the authorities of a Member State, the courts of that State must adjudicate on actions pending against the national decision allowing that amendment.

I. Legal framework

A. EU law

1. Regulation No 1151/2012

5. Pursuant to Article 7:

'1. A protected designation of origin or a protected geographical indication shall comply with a specification which shall include at least:

(a) the name to be protected as a designation of origin or geographical indication …;

(b) a description of the product, including the raw materials, if appropriate, as well as the principal physical, chemical, microbiological or organoleptic characteristics of the product;

(c) the definition of the geographical area … and, where appropriate, details indicating compliance with the requirements of Article 5(3);

(d) evidence that the product originates in the defined geographical area referred to in Article 5(1) or (2);

(e) a description of the method of obtaining the product and, where appropriate, the authentic and unvarying local methods as well as information concerning packaging …;

(f) details establishing the following:

(i) the link between the quality or characteristics of the product and the geographical environment referred to in Article 5(1); or

(ii) where appropriate, the link between a given quality, the reputation or other characteristic of the product and the geographical origin referred to in Article 5(2);

…

(h) any specific labelling rule for the product in question.

…'

6. The second subparagraph of Article 49(4) provides:

'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.'

7. Article 53 stipulates:

‘1. A group having a legitimate interest may apply for approval of an amendment to a product specification.

Applications shall describe and give reasons for the amendments requested.

2. Where the amendment involves one or more amendments to the specification that are not minor, the amendment application shall follow the procedure laid down in Articles 49 to 52.

However, if the proposed amendments are minor, the Commission shall approve or reject the application. In the event of the approval of amendments implying a modification of the elements referred to in Article 50(2), the Commission shall publish those elements in the *Official Journal of the European Union*.

For an amendment to be regarded as minor in the case of the quality scheme described in Title II, it shall not:

(a) relate to the essential characteristics of the product;

(b) alter the link referred to in point (f)(i) or (ii) of Article 7(1);

(c) include a change to the name, or to any part of the name of the product;

(d) affect the defined geographical area; or

(e) represent an increase in restrictions on trade in the product or its raw materials.

…’

2. Delegated Regulation No 664/2014

8. Article 6(2) (‘Amendments to a product specification’) provides:

‘Applications for a minor amendment to a product specification concerning protected designations of origin or protected geographical indications shall be submitted to the authorities of the Member State the geographical area of the designation or indication relates to. …

The application for a minor amendment shall only propose minor amendments in the meaning of Article 53(2) of Regulation (EU) No 1151/2012. It shall describe those minor amendments, provide a summary of the reason an amendment is required and show that the proposed amendments qualify as minor in accordance with Article 53(2) of Regulation (EU) No 1151/2012. It shall compare, for each amendment, the original product specification and, where relevant, the original single document with the amended version proposed. The application shall be self-sufficient and shall contain all amendments to the product specification and, where relevant, to the single document for which approval is sought.

Minor amendments referred to in the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 shall be deemed approved if the Commission does not inform the applicant otherwise within three months from the reception of the application.

An application for a minor amendment that does not comply with the second subparagraph of this paragraph shall not be admissible. Tacit approval referred to in the third subparagraph of this paragraph shall not apply to such applications. The Commission shall inform the applicant if the application is deemed inadmissible within three months from the reception of the application.

The Commission shall make public the approved minor amendment to a product specification not implying a modification of the elements referred to in Article 50(2) of Regulation (EU) No 1151/2012.'

3. Implementing regulation No 668/2014

9. Article 10 ('Procedural requirements for amendments to a product specification') reads:

'1. Applications for approval of an amendment to the product specification for protected designations of origin and protected geographical indications which is not minor shall be drawn up in accordance with the form set out in Annex V. Those applications shall be completed in accordance with the requirements laid down in Article 8 of Regulation (EU) No 1151/2012. The amended single document shall be drawn up in accordance with the form set out in Annex I to this Regulation. The reference to the publication of the product specification in the amended single document shall lead to the updated version of the product specification proposed.

…

2. Applications for approval of a minor amendment referred to in the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 shall be drawn up in accordance with the form set out in Annex VII to this Regulation.

Applications for approval of a minor amendment concerning protected designations of origin or protected geographical indications shall be accompanied by the updated single document, if amended, which shall be drawn up in accordance with the form set out in Annex I. The reference to the publication of the product specification in the amended single document shall lead to the updated version of the product specification proposed.

For applications originating in the Union, Member States shall include a declaration that they consider that the application meets the conditions of Regulation (EU) No 1151/2012 and of the provisions adopted pursuant thereto and the publication reference of the updated product specification. … Applications for a minor amendment in cases referred to in the fifth subparagraph of Article 6(2) of Delegated Regulation (EU) No 664/2014 shall include the reference to the publication of the updated product specification, for applications originating in Member States, and the updated product specification, for applications originating in third countries.

…'

B. National law: Decree of 8 September 2017 of the Minister for Agriculture and Food and of the Minister for Economic Affairs and Finance, relating to the amendment of the specification of the PDO 'Comté'[5]

10. Article 1 states:

'The specification of the protected designation of origin "Comté" as amended following a proposal by the INAO permanent commission of the national committee of dairy, foodstuffs, forestry and agricultural products is hereby approved for the purpose of its transmission to the European Commission.'

11. Pursuant to Article 2:

'This Decree shall be applicable as from the date of approval of the amendments made to the specification of the protected designation of origin "Comté" by the European Commission.

The date of approval of the amendments by the European Commission shall be made public by a notice published in the Official Gazette of the Ministry of Agriculture and Food, accompanied, if necessary, by the approved version of the specification.'

II. Main proceedings and question referred for a preliminary ruling

12. On 16 November 2017, the Groupement agricole d'exploitation en commun (GAEC) Jeanningros brought an action before the Conseil d'État (Council of State) against the Decree of 8 September 2017, seeking the annulment of clause 5.1.18 of the amended specification, which prohibits the use of 'robotic milkers'.

13. By decision published on 1 June 2018, the Commission approved the application for a minor amendment of the specification for the PDO 'Comté',[6] in accordance with the second subparagraph of Article 53(2) of Regulation No 1151/2012, taking account of the third subparagraph of Article 6(2) of Delegated Regulation No 664/2014.

14. The Conseil d'État (Council of State) asks whether it must adjudicate on the action brought against the Decree of 8 September 2017, which is still pending, or whether, on the other hand, it must decide that there is no longer any need to adjudicate on the dispute, as it has done in other cases.[7]

15. The position hitherto adopted by the referring court is that, where it is seised of an action contesting a decision by means of which the French Government transmits to the Commission an application to register a PDO together with the approved specification and, when the time comes to give judgment, the Commission has already registered that PDO,[8] the action becomes devoid of purpose.

5 Arrêté du 8 septembre 2017 du ministre de l'Agriculture et de l'Alimentation et du ministre de l'Économie et des Finances relatif à la modification du cahier des charges et de l'appellation d'origine protégée «Comté» (JORF No 217 of 16 September 2017; 'Decree of 8 September 2017').

6 Publication of an application for approval of minor amendments in accordance with the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ 2018 C 187, p. 7).

7 Conseil d'Etat, 'Syndicat de défense et de promotion des fabricants et affineurs du Morbier', 5 novembre 2003, req. n.º 0230438.

8 The Register of protected designations of origin and protected geographical indications is provided for in Article 11(1) of Regulation No 1151/2012. It can be accessed at http://ec.europa.eu/agriculture/quality/door/list.html

16. In accordance with that case-law, the Conseil d'État (Council of State) will not examine the lawfulness of a specification registered by the Commission, even if, as in this case, an action has been brought against the national decision on which it is based. That also applies to minor amendments.

17. The referring court asks whether that approach is compatible with EU law or whether, on the other hand, in the light of the effect which the annulment of the contested national decision may have on the lawfulness of the registration effected by the Commission, it must give a ruling on the lawfulness of that decision.

18. As a result of its uncertainties, the Conseil d'État (Council of State) has referred the following question to the Court of Justice for a preliminary ruling:

'Must Article 53 of 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, Article 6 of Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules, and Article 10 of Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union ['Charter'], be interpreted as meaning that, in the specific case where the European Commission has upheld the application by the national authorities of a Member State seeking to have the specification of a name amended and to secure registration of the controlled designation of origin (*appellation d'origine contrôlée)*, although that application is still the subject of an action pending before the national courts of that State, those courts may decide that there is no longer any need to adjudicate on the dispute, or, in view of the effects attached to a possible annulment of the contested measure on the validity of the registration by the European Commission, must those courts rule on the lawfulness of that measure adopted by the national authorities?'

19. Written observations were lodged in the preliminary-ruling proceedings by the French Government and the Commission. The Court of Justice decided to adjudicate on the case without opening the oral part of the procedure.

III. Analysis

20. For the purposes of replying to the question referred for a preliminary ruling, I believe that it is helpful, first of all, to examine the rules governing the administrative procedures laid down for making amendments to PDO specifications and the detailed arrangements for the judicial review of those procedures.

A. Procedures for the amendment of a PDO specification

21. The amendment of a PDO specification, like the registration of a PDO, is carried out using a composite administrative procedure, involving the competent authorities of the Member State concerned and the Commission. Recital 58 in the preamble to Regulation No 1151/2012 draws attention to that point. [9]

9

22. Article 53(2) of Regulation No 1151/2012 differentiates between two types of amendment: major ('not minor') amendments and minor amendments.

23. Major ('not minor') amendments:

– relate to the essential characteristics of the product;

– alter the link between the quality or characteristics of the product and the geographical environment or the link between a given quality, the reputation or other characteristic of the product and its geographical origin (Article 7(1)(f)(i) and (ii) of Regulation No 1151/2012);

– include a change to the name, or to any part of the name of the product;

– affect the defined geographical area; and

– represent an increase in restrictions on trade in the product or its raw materials.

24. Minor amendments are those which the second subparagraph of Article 53(2) of Regulation No 1151/2012 does not regard as major.

25. Likewise, Article 53(2) of Regulation No 1151/2012 stipulates two procedures for dealing with amendments to specifications. In the case of amendments that are 'not minor', reference is made to Articles 49 to 52 (the procedure applicable to the registration of PDOs); for minor amendments, the provision lays down a simplified procedure.

1. (Ordinary) procedure for major ('not minor') amendments to a PDO specification

26. The PDO registration procedure applies to major amendments to a specification.[10] It includes an initial stage which begins (Article 49(2) of Regulation No 1151/2012) with the application to register a PDO, submitted by a group of producers to the authorities of the Member State in which the production area is geographically situated.

27. Those authorities 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. Adequate publication of the application must be ensured, in addition to 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.[11]

28. The national authorities must assess any oppositions received and determine whether the application meets the requirements of Regulation No 1151/2012. If their assessment is positive, the authorities will adopt a decision and must ensure that the specification on which they have based their favourable decision is published and may be accessed electronically.

'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.'

10 Under Article 7 of Delegated Regulation No 664/2014, that ordinary procedure also applies to the cancellation of a PDO registration where compliance with the conditions of the specification is not ensured or where no product is placed on the market under the PDO for at least seven years.

11 Article 49(3) of Regulation No 1151/2012.

29. Article 49(4) of Regulation No 1151/2012, pursuant to which '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', is particularly relevant at this juncture.

30. Where the decision of the competent national authority is positive, the national stage ends with the forwarding of that decision to the Commission, which is also notified of any admissible oppositions received. [12]

31. The 'European' stage of that procedure begins with scrutiny of the application, which is 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 PDOs. If, following that scrutiny (which must not take longer than six months), the Commission decides to approve the application, [13] it must publish in the *Official Journal of the European Union* the single document and the reference to the publication of the product specification. [14]

32. Article 51 of Regulation No 1151/2012 provides that, following publication in the *Official Journal of the European Union*, 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 lodge a notice of opposition. [15] The Commission must forward the notice of opposition without delay to the authority of the Member State that lodged the application, [16] and a procedure is subsequently initiated if that opposition is confirmed. [17]

33. If it does not receive a notice of opposition (or an admissible reasoned statement of opposition), the Commission must register the major ('not minor') amendments to the specification without applying the procedure referred to in Article 57(2) of Regulation No 1151/2012.

34. The Commission must 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 must adopt the implementing acts for the registration or major amendment of the PDO specification, in accordance with the scrutiny procedure referred to in Article 57(2) of Regulation No 1151/2012. [18]

35. In any event, acts implementing major amendments to a PDO specification and rejection decisions are to be published in the *Official Journal of the European Union*. [19]

12 That is to say, oppositions from natural or legal persons that have legally marketed the products in question, using the names concerned continuously for at least the preceding five years (Article 49(4) of Regulation No 1151/2012).

13 If the Commission refuses the application because it considers that the conditions for registration are not fulfilled, it must adopt the relevant implementing acts for the purposes of rejecting the application (Article 52(1) of Regulation No 1151/2012).

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

15 That notice must include at all events a declaration that the application may infringe the conditions laid down in the regulation for important amendments of specifications.

16 Article 51(1) of Regulation No 1151/2012.

17 The notice of opposition must be followed, within two months, by a reasoned statement of opposition, the admissibility of which will be checked by the Commission. If the Commission considers the statement to be admissible, it 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 that must not exceed three months.

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

19 Article 52(4) of Regulation No 1151/2012.

2. (Simplified) procedure for minor amendments to a PDO specification

36. Regulation No 1151/2012 governs the simplified procedure in very succinct terms. The second subparagraph of Article 53(2) simply provides that 'if the proposed amendments are minor, the Commission shall approve or reject the application.' It also provides that if an amendment to the single document or PDO specification is approved, the Commission must publish it in the *Official Journal of the European Union*.

37. Delegated Regulation No 664/2014 developed that simplified procedure by making it similar to the ordinary procedure in Article 6(2). In accordance with that provision, applications for minor amendments: (i) must be submitted to the authorities of the Member State of the geographical area of the designation; (ii) must describe those amendments, explaining why they are considered to be minor, and compare them with the original wording; (iii) do not have provided for them a national opposition procedure, in contrast to the ordinary procedure. [20]

38. Lastly, the first subparagraph of Article 6(2) of Delegated Regulation No 664/2014 provides that, if the Member State considers that the requirements of Regulation (EU) No 1151/2012 and of the provisions adopted thereunder are met, it may lodge a minor PDO specification amendment application dossier with the Commission.

39. The 'European' part of that procedure is also simplified. There is no opposition procedure at this level and the Commission has decision-making power which may be express or presumed (minor amendments are deemed to be approved if the Commission does not inform the applicant otherwise within three months of receipt of the application). [21] If the Commission considers the application to be inadmissible, it must notify the applicant of this within three months of receipt. If the Commission approves the application, it must make public the minor amendments to the PDO specification.

B. Judicial review of decisions adopted in PDO specification amendment procedures

40. As explained above, the simplified and the ordinary procedures are both composite administrative procedures in which the national authorities and the Commission are involved consecutively.

41. Composite procedures of this kind are governed on the basis of individual circumstances in EU law [22] and have been scrutinised extensively by academic lawyers on account of the many legal issues they raise. [23]

20 However, if the application for a minor amendment does not come from the group which submitted the application for registration of the name or names to which the product specification refers, the Member State must give that group (if it still exists) the opportunity to make comments.

21 Tacit approval does not apply, however, to minor amendments which do not comply with the second subparagraph of Article 6(2) of Delegated Regulation No 664/2014.

22 An ambitious proposal to codify EU administrative procedures was made by the legal writers Mir, O., Hofmann, H.C.H., Schneider, J.-P., Ziller, J. and others (eds.), *Código ReNEUAL de procedimiento administrativo de la Unión Europea*, INAP, Madrid, 2015. Article I-4(4) of the 'ReNEUAL Code' defines the composite procedure as an administrative procedure in which the authorities of the EU and those of a Member State or a number of Member States have different roles which are interdependent. The combination of two directly related administrative procedures is also a composite procedure.

23 Alonso de León, S., *Composite administrative procedures in the European Union*, Iustel, Madrid, 2017; Eliantonio, M., 'Judicial Review in an Integrated Administration: the Case of "Composite Procedures"', *Review of European Administrative Law*, 2014 No 2, pp. 65 to 102; Della Cananea, G., 'I procedimenti amministrativi composti dell'Unione europea', in Bignami, F. and Cassese, S. (dirs.), *Il procedimento amministrativo nel diritto europeo*, Milan, Giuffrè, 2004; Mastrodonato, G., *I procedimenti amministrativi composti nel diritto comunitario*, Bari, Cacucci, 2007; Hofmann, H.C.H., 'Composite decision-making procedures in EU administrative law', in Hofmann, H.C.H. and Türk, A., *Legal Challenges in EU Administrative Law. Towards an Integrated Administration*, Edward Elgar, Cheltenham, 2009, p. 136.

42. The Court of Justice has also approached the judicial review of decisions adopted in those procedures on a case-by-case and non-exhaustive basis,[24] although a number of recent cases relating to the banking union are helping to refine its case-law.[25]

43. In my Opinion in *Berlusconi and Fininvest*, I examined the Court's case-law on EU composite administrative procedures, drawing a distinction based on whether the decision-making power lay with the national authorities or the EU institutions.[26]

44. In the judgment in *Berlusconi and Fininvest*, the Court found, in essence, that Article 263 TFEU prevents national courts from reviewing the legality of decisions to initiate procedures, measures of inquiry and non-binding proposals adopted by the competent national authorities as part of the composite administrative procedure to authorise the acquisition of or increase in a qualifying holding in a credit institution. That finding was based in turn on two propositions:

– where the acts of the national authorities constitute a stage of a procedure in which an EU institution exercises, alone, the final decision-making power without being bound by the preparatory acts or the proposals of the national authorities, those acts are EU acts;[27]

– where EU law lays down that an EU institution is to have an exclusive decision-making power, it falls to the EU courts, by virtue of their exclusive jurisdiction under Article 263 TFEU, to rule on the legality of the final decision adopted by the EU institution at issue. It falls to the EU Courts alone to examine, in order to ensure effective judicial protection of the persons concerned, any defects vitiating the preparatory acts or the proposals of the national authorities that would be such as to affect the validity of that final decision.[28]

45. As I observed in my Opinion in that case,[29] in composite administrative procedures in which national authorities and EU authorities are involved, the exercise of the final decision-making power is the crucial factor for determining whether the EU Courts or the national courts must conduct a judicial review. If the decision-making power is held by an EU body, it will fall to the EU Courts to carry out a judicial review, in accordance with Article 263 TFEU. If the national authority holds a specific decision-making power, the national courts will have jurisdiction to review the legality of its acts.[30]

46. Do the national authorities have their own decision-making power in the first part of the composite administrative procedure for a minor amendment to a PDO specification? If that were the case, it would fall to the national courts to carry out a judicial review of that national decision, irrespective of whether or not the Commission adopted a decision to register the amendment in the second part of the procedure.

24 Brito Bastos, F., 'Derivative illegality in European composite administrative procedures', *Common Market Law Review*, 2018, No 1, pp. 101 to 134.

25 Judgment of 19 December 2018, *Berlusconi and Fininvest* (C-219/17, EU:C:2018:1023)('judgment in *Berlusconi and Fininvest*'). Judgment is pending in *Iccrea Banca*, in which I delivered my Opinion on 9 July 2019 (C-414/18, EU:C:2019:574).

26 Opinion of 27 June 2018 (C-219/17, EU:C:2018:502, points 64 to 79).

27 Judgment of 18 December 2007, *Sweden* v *Commission* (C-64/05 P, EU:C:2007:802, paragraphs 93 and 94), and judgment in *Berlusconi and Fininvest*, paragraph 43.

28 Judgment in *Berlusconi and Fininvest*, paragraph 44. See, by analogy, judgment of 22 October 1987, *Foto-Frost* (314/85, EU:C:1987:452, paragraph 17).

29 Opinion of 27 June 2018 (C-219/17, EU:C:2018:502, points 60 to 63).

30 In my Opinion of 9 July 2019 in *Iccrea Banca* (C-414/18, EU:C:2019:574), I argued that ordinary contributions to the Single Resolution Fund (SRF) are also determined through a composite administrative procedure in which the national resolution authorities are involved, but the final decision falls to the Single Resolution Board (SRB). I therefore took the view that judicial review of that decision falls exclusively to the Court of Justice and not to the national courts.

47. In order to answer that question, it is helpful to refer to the Court's case-law on procedures for the registration of PDOs.[31] As I shall explain below, that case-law makes clear, in my view, that the authorities of the Member State concerned have a specific, autonomous decision-making power in the national part of the procedure.

48. According to the Court of Justice, in the ordinary procedure for registration of a PDO:

– 'there is … a division of powers between the Member State concerned and the Commission. Whether a registration under the normal procedure or the simplified procedure is concerned, the registration can only take place if the Member State concerned has made an application in that regard and has forwarded a specification and the necessary information for registration';[32]

– 'a Member State to which an application for registration is submitted under the normal procedure must check that the application is justified and, if it considers that the requirements of Regulation No 2081/92 are satisfied, forward it to the Commission. Furthermore, … the Commission undertakes only a simple formal examination to check whether those requirements are satisfied'.[33]

49. The Court concluded from this that 'the decision to register a designation as a PDO … may only be taken by the Commission if the Member State concerned has submitted to it an application for that purpose and that such an application may only be made if the Member State has checked that it is justified. That system of division of powers is attributable particularly to the fact that registration assumes that it has been verified that a certain number of conditions have been met, which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check'.[34]

50. I believe that that case-law on the procedure for registration of a PDO can be applied to the ordinary procedure for major ('not minor') amendments to the specification: as already indicated, the first subparagraph of Article 53(2) of Regulation No 1151/2012 makes reference to Articles 49 to 52 of that regulation, which concern the registration procedure.

51. I believe that that case-law can also be applied to the simplified procedure because Article 6(2) of Delegated Regulation No 664/2014 treats it in a similar manner to the ordinary procedure (which, in turn, is that established for the registration of PDOs), albeit by removing the opposition stage in both parts.

52. The case-law cited concerned the ordinary procedure for registration of PDOs, created by Regulation No 2081/92, which is the predecessor of the current procedure (Articles 49 to 52 of Regulation No 1151/2012). As I have pointed out, it also concerned the procedure under the obsolete Article 17 of that regulation, that is, the simplified, transitional procedure for the registration in the EU of existing PDOs protected or established by usage in the Member States.[35]

31 Judgments of 6 December 2001, *Carl Kühne and Others* (C-269/99, EU:C:2001:659)('judgment in *Carl Khüne and Others*'), and of 2 July 2009, *Bavaria and Bavaria Italia* (C-343/07, EU:C:2009:415)('judgment in *Bavaria and Bavaria Italia*'). Also relevant is the judgment of the General Court 23 April 2018, *CRM* v *Commission* (T-43/15, not published, EU:T:2018:208), to which I shall refer below.

32 Judgments in *Carl Kühne and Others*, paragraphs 50 and 51, and *Bavaria and Bavaria Italia*, paragraph 64. The latter concerned the division of powers between the national authorities and the Commission in the composite procedure laid down in the obsolete Article 17 of 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), which was the simplified, transitional procedure for the registration in the EU of existing PDOs protected or established by usage in the Member States.

33 Judgments in *Carl Kühne and Others*, paragraph 52, and *Bavaria and Bavaria Italia*, paragraph 65.

34 Judgments in *Carl Kühne and Others*, paragraph 53, and *Bavaria and Bavaria Italia*, paragraph 66.

35 See footnote 32.

53. Those procedures also included a national part and another, EU part, similar in nature to the current procedures for the registration of PDOs and the amendment of PDO specifications. Accordingly, I repeat, the case-law of the Court which examined those procedures can be applied to minor amendments to a PDO specification.

54. In accordance with that case-law, the national authority has control of the procedure for a minor amendment, which is based, inter alia,[36] on the following reasons:

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

– the national authorities must examine whether the proposal is compatible with the substantive requirements of Regulation No 1151/2012, since it is those authorities which have the more detailed knowledge needed to check the specific features of the minor amendments concerned;

– the authority of the Member State has competence to approve or reject the application for a minor amendment in the national part of the procedure. It therefore holds the *key* for opening, or not opening, the subsequent part of the procedure by forwarding the application to the Commission. The Commission is unable to intervene without a favourable decision of the national authority;

– the Commission checks whether the application for a minor amendment is compatible with Regulation No 1151/2012, Delegated Regulation No 664/2014 and Implementing Regulation No 668/2014, that is to say that it contains the required information and that that information does not appear to contain obvious mistakes;[37]

– the national authority retains the right to withdraw the application submitted to the Commission before the Commission registers it.

55. Those powers testify to the fact that the national authority has a broad autonomous decision-making power in the national part of the composite procedure for a minor amendment of a PDO specification.[38] That power is subject to review by the national courts alone, while the Court of Justice has jurisdiction to review the decisions of the Commission in the EU part of the procedure.[39]

56. That assertion is borne out by Article 49(4) of Regulation No 1151/2012, to which I have already referred.[40] Under the basic rule, the EU legislature recognises specifically that any natural or legal person having a legitimate interest must have 'an opportunity to appeal' against a favourable decision of the authorities of a Member State on the amendment of a specification.

36 It is possible for Member States to provide in their national law for transitional protection for PDOs, limited to their territory, from the time when the national part of the registration procedure ends until such time as the Commission gives a decision on the application. Although Article 9 of Regulation No 1151/2012 provides for that possibility only in respect of the registration of a PDO and not the amendment of its specification, it also reflects the national authority's control over the national part of such composite procedures.

37 Judgments in *Carl Kühne and Others*, paragraph 54, and *Bavaria and Bavaria Italia*, paragraph 67.

38 In procedures to amend the specifications of PDOs for wines, which are governed by later provisions, the national authority has almost exclusive powers, except in relation to publication in the Official Journal, which is done by the Commission. It is possible to identify a tendency towards strengthening the powers of the national authorities, possibly because of the Commission's difficulties in administering the EU part of the procedure.
Procedures to amend the specifications of PDOs for wines are governed essentially by Article 105 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671), and by Articles 14 to 18 of Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protection of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation (OJ 2019 L 9, p. 2).

39 Judgment in *Bavaria and Bavaria Italia*, paragraphs 70 and 71.

40 Point 28 of this Opinion.

57. Admittedly, that appeal — which, naturally, must be lodged with the national courts — is expressly provided for in respect of decisions on major amendments to PDO specifications. However, given the similarity of the procedures applicable to major and minor amendments, I believe that the right to lodge an appeal is also applicable to minor amendments.

58. National authorities' decisions on minor amendments, as autonomous acts which are necessary in order to enable the Commission to give a decision on the amendments, fall outside the exclusive jurisdiction of the EU Courts. In fact, from a substantive point of view and given the Commission's very limited discretion in that regard, it is the national authorities' decisions which truly take into account all the information on which the approval of changes to a specification is based.

59. According to the case-law of the Court of Justice, it is the national courts which are required to rule on any irregularities in a national act — making a reference to the Court for a preliminary ruling where appropriate — on the same terms as those on which they review any definitive act adopted by the same national authority which is capable of adversely affecting third parties and moreover, in the light of the principle of effective judicial protection, to regard an action brought for that purpose as admissible even if the national rules of procedure do not so provide. [41]

C. Effect of those considerations on the main proceedings

60. The dispute between the parties before the Conseil d'État (Council of State) concerns a minor amendment to the PDO specification for 'Comté' cheese. It is common ground that the new clause in dispute (number 5.1.18), which inserts the prohibition on robotic milkers, is minor.

61. The referring court essentially asks whether, in the light of the regulations referred to above and Article 47 of the Charter, it is possible for it to confirm its earlier case-law (pursuant to which it decided that there was no longer any need to adjudicate on the actions before it, once the Commission had approved the amendments concerned) or whether it must amend that case-law.

62. The considerations I have set out above, based on the Court's case-law on the procedures for the registration of PDOs and on the provisions governing that subject (in particular, Article 49(4) of Regulation No 1151/2012), lead me to propose the second of those positions.

63. I believe, in that connection, that failure to rule on an action brought by those lawfully entitled to do so, in the case of minor amendments to a PDO specification, would be incompatible with the right granted to those concerned by Regulation No 1151/2012 and with the case-law of the Court of Justice on composite procedures for the registration of PDOs. To that extent, it would also breach Article 47 of the Charter.

64. That really answers the question referred for a preliminary ruling, because in that question the referring court focuses on whether or not there is an obligation to adjudicate on the action rather than on the effects which its judgment may have on decisions already adopted by the Commission. However, I shall also comment on such decisions.

65. To my mind, the annulment of the national act which approves the minor amendment and is then forwarded to the Commission would lead to a *chain reaction* in the form of depriving the Commission's decision of a legal basis.

41 See, in that connection, judgment of 3 December 1992, *Oleificio Borelli* v *Commission* (C-97/91, EU:C:1992:491, paragraphs 9 to 13); judgment in *Carl Kühne and Others*, paragraph 58; judgment in *Bavaria and Bavaria Italia*, paragraph 57; and judgment in *Berlusconi and Fininvest*, paragraphs 45 and 46.

66. To avoid that undesirable consequence, it would be appropriate for the Commission to suspend the part of the procedure with which it deals when there are actions pending before national courts against the decision of the national authority which approved the minor amendment of the specification.[42] That would result in proper compliance with the applicants' right to legal protection, on the one hand, and legal certainty, on the other, by preventing the Commission's decisions from being deprived, a posteriori, of a legal basis.[43]

67. The obligation to ensure the effective legal protection of persons who have brought actions before the national courts, whose right of action is based on a provision of EU law, and, possibly, the principle of sound administration,[44] should lead the Commission to include in its assessment of an application any actions which have been brought against the national decision before the courts of the Member State concerned.[45]

68. In the same vein, the national authorities must not forward to the Commission an application for a minor amendment of a PDO specification if there are actions pending before the national courts against its approval decision or, a fortiori, if a national court has given a judgment annulling the decision, even if that judgment has not become final.

69. In summary, the Commission must refrain from dealing with an application for a minor amendment of a PDO specification both if it is aware of the existence of any legal actions pending against the national approval decision and if there are judgments which invalidate that decision in whole or in part. Otherwise, any annulment of that national decision by final judgment of the courts of the Member State, which are still required to give judgment on any actions pending before them, would unexpectedly invalidate the Commission's decision.

IV. Conclusion

70. In the light of the foregoing considerations, I propose that the Court of Justice reply as follows to the question referred for a preliminary ruling by the Conseil d'État (Council of State, France):

Articles 49(4) and 53(2) of 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 and Article 6 of Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the establishment of the Union symbols for protected designations of origin, protected geographical indications and traditional specialities guaranteed and with regard to certain rules on sourcing, certain procedural rules and certain additional transitional rules, in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that national courts may not decide that there is no longer any need to adjudicate on actions pending before them against decisions of the national authority relating to minor amendments of the specification of a protected designation of origin on the basis that, while those actions were pending, the Commission approved and published the application concerned in the *Official Journal of the European Union*.

42 It would be necessary to take the appropriate measures to extend, in those exceptional circumstances, the period for giving judgment so that presumed approval of the application did not occur.

43 The judgment of the General Court of 23 April 2018, *CRM* v *Commission* (T-43/15, not published, EU:T:2018:208), found that the Commission could not register the PGI 'Piadina Romagnola' where the Italian authority had approved and forwarded the application to the Commission six days after the partial annulment of the specification by judgment of a lower national court. The Commission approved that PGI and published its decision in the *Official Journal of the European Union* without waiting for the outcome of the appeal before the Consiglio di Stato (Council of State, Italy) against the judgment of the lower court partially annulling the specification.

44 Article 41 of the Charter, to which the General Court referred in its judgment of 23 April 2018, *CRM* v *Commission* (T-43/15, not published, EU:T:2018:208, paragraphs 67 to 83).

45 The Commission must conduct that assessment using the powers of analysis which it has in the EU part of the procedure, pursuant to Article 50(1) of Regulation No 1151/2012.