Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

14 July 2022 *

(Failure of a Member State to fulfil obligations – Regulation (EU) No 1151/2012 – Quality schemes for agricultural products and foodstuffs – Article 13 – Use of the protected designation of origin (PDO) 'Feta' to designate cheese produced in Denmark and intended for export to third countries – Article 4(3) TEU – Principle of sincere cooperation)

In Case C-159/20,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 8 April 2020,

European Commission, represented by M. Konstantinidis, I. Naglis and U. Nielsen, acting as Agents,

applicant,

supported by:

Hellenic Republic, represented by E.-E. Krompa, E. Leftheriotou, E. Tsaousi and A.-E. Vasilopoulou, acting as Agents,

Republic of Cyprus, represented by V. Christoforou and E. Zachariadou, acting as Agents,

interveners,

v

Kingdom of Denmark, represented by M.P. Brøchner Jespersen and J. Nymann-Lindegren, and by V. Pasternak Jørgensen, M. Søndahl Wolff and L. Teilgård, acting as Agents,

defendant,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis (Rapporteur), M. Ilešič, D. Gratsias and Z. Csehi, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

* Language of the case: Danish.

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 17 March 2022,

gives the following

Judgment

1 By its application, the European Commission seeks a declaration from the Court that, by failing to prevent or stop the use by Danish dairy producers of the designation 'Feta' on cheese not conforming to the product specification published in Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10), the Kingdom of Denmark has failed to fulfil its obligations under Article 13 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 (OJ 2012 L 343, p. 1).

2 In addition, the Commission seeks a declaration from the Court that, by allowing Danish dairy producers to produce and market imitations of feta, the Kingdom of Denmark infringed Article 4(3) TEU, read in conjunction with Article 1(1) and Article 4 of Regulation No 1151/2012.

Legal context

Regulation No 1829/2002

3 By Regulation No 1829/2002, the name 'Feta' was entered in the register of protected designations of origin (PDOs) and protected geographical indications (PGIs) as a PDO.

Regulation No 1151/2012

4 Recitals 2, 3, 5, 18, 20 and 27 of Regulation No 1151/2012 state:

'(2) Citizens and consumers in the Union increasingly demand quality as well as traditional products. They are also concerned to maintain the diversity of the agricultural production in the Union. This generates a demand for agricultural products or foodstuffs with identifiable specific characteristics, in particular those linked to their geographical origin.

(3) Producers can only continue to produce a diverse range of quality products if they are rewarded fairly for their effort. This requires that they are able to communicate to buyers and consumers the characteristics of their product under conditions of fair competition. It also requires them to be able to correctly identify their products on the marketplace.

…

(5) The Europe 2020 policy priorities as set out in the Commission Communication entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth", include the aims of achieving a competitive economy based on knowledge and innovation and fostering a high-employment economy delivering social and territorial cohesion. Agricultural product quality policy should therefore provide producers with the right tools to better identify and promote those of their products that have specific characteristics while protecting those producers against unfair practices.

…

(18) The specific objectives of protecting designations of origin and geographical indications are securing a fair return for farmers and producers for the qualities and characteristics of a given product, or of its mode of production, and providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices.

…

(20) A Union framework that protects designations of origin and geographical indications by providing for their inclusion on a register facilitates the development of those instruments, since the resulting, more uniform, approach ensures fair competition between the producers of products bearing such indications and enhances the credibility of the products in the consumers' eyes. Provision should be made for the development of designations of origin and geographical indications at Union level and for promoting the creation of mechanisms for their protection in third countries in the framework of the World Trade Organisation (WTO) or multilateral and bilateral agreements, thereby contributing to the recognition of the quality of products and of their model of production as a factor that adds value.

…

(27) The Union negotiates international agreements, including those concerning the protection of designations of origin and geographical indications, with its trade partners. In order to facilitate the provision to the public of information about the names so protected, and in particular to ensure protection and control of the use to which those names are put, the names may be entered in the register of [PDOs] and [PGIs]. Unless specifically identified as designations of origin in such international agreements, the names should be entered in the register as [PGIs].'

5 Under Title I of that regulation, entitled 'General provisions', Article 1 thereof, entitled 'Objectives', is worded as follows:

'1. This Regulation aims to help producers of agricultural products and foodstuffs to communicate the product characteristics and farming attributes of those products and foodstuffs to buyers and consumers, thereby ensuring:

(a) fair competition for farmers and producers of agricultural products and foodstuffs having value-adding characteristics and attributes;

(b) the availability to consumers of reliable information pertaining to such products;

(c) respect for intellectual property rights; and

(d) the integrity of the internal market.

The measures set out in this Regulation are intended to support agricultural and processing activities and the farming systems associated with high quality products, thereby contributing to the achievement of rural development policy objectives.

2. This Regulation establishes quality schemes which provide the basis for the identification and, where appropriate, protection of names and terms that, in particular, indicate or describe agricultural products with:

(a) value-adding characteristics; or

(b) value-adding attributes as a result of the farming or processing methods used in their production, or of the place of their production or marketing.'

6 Under Title II of that regulation, entitled '[PDOs] and [PGIs]', Article 4 thereof, entitled 'Objective', states:

'A scheme for [PDOs] and [PGIs] is established in order to help producers of products linked to a geographical area by:

(a) securing fair returns for the qualities of their products;

(b) ensuring uniform protection of the names as an intellectual property right in the territory of the Union;

(c) providing clear information on the value-adding attributes of the product to consumers.'

7 Article 12 of Regulation No 1151/2012, entitled 'Names, symbols and indications', provides, in paragraph 1 thereof:

'[PDOs] and [PGIs] may be used by any operator marketing a product conforming to the corresponding specification.'

8 Article 13 of Regulation No 1151/2012, entitled 'Protection', provides as follows:

'1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;

(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;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the consumer as to the true origin of the product.

…

3. Member States shall take appropriate administrative and judicial steps to prevent or stop the unlawful use of [PDOs] and [PGIs], as referred to in paragraph 1, that are produced or marketed in that Member State.

…'

9 Article 36 of that regulation, as amended by Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) (OJ 2017 L 95, p. 1), provides:

'Official controls performed in accordance with [Regulation 2017/625] shall cover:

(a) verification that a product complies with the corresponding product specification; and

(b) monitoring of the use of registered names to describe [the] product placed on the market, in conformity with Article 13 for names registered under Title II and in conformity with Article 24 for names registered under Title III.'

10 Under Article 37(1) of that regulation, as amended by Regulation 2017/625:

'In respect of [PDOs], [PGIs] and traditional specialities guaranteed that designate products originating within the Union, verification of compliance with the product specification, before placing the product on the market, shall be carried out by:

(a) the competent authorities designated in accordance with Article 4 of Regulation (EU) 2017/625; or

(b) delegated bodies as defined in Article 3(5) of Regulation (EU) 2017/625.

…'

Regulation (EU) No 608/2013

11 Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ 2013 L 181, p. 15), provides, in Article 2 thereof:

'For the purposes of this Regulation:

(1) "intellectual property right" means:

…
(d) a geographical indication;

…

(4) "geographical indication" means:
(a) a [PGI] or [a PDO] for agricultural products and foodstuff as provided for in [Regulation No 1151/2012];

…'

Pre-litigation procedure and proceedings before the Court

12 The Greek authorities informed the Commission that undertakings with their registered office in Denmark were exporting cheese to third countries under the designations 'Feta', 'Danish Feta' and 'Danish Feta cheese' even though that product does not comply with the product specification for the PDO 'Feta'.

13 Despite the Greek authorities' requests, the Danish authorities refused to put an end to that practice, considering that it was not contrary to EU law since, in their view, Regulation No 1151/2012 applies only to products sold in the territory of the European Union and therefore does not prohibit Danish undertakings from using the name 'Feta' to designate Danish cheese exported to third countries where that name is not protected.

14 On 26 January 2018, the Commission sent the Kingdom of Denmark a letter of formal notice in which it indicated its view that, by failing to prevent or stop the infringement consisting in that practice, that Member State breached EU law, in particular Article 13 of Regulation No 1151/2012, and infringed Article 4(3) TEU.

15 Since the Kingdom of Denmark replied that it did not share the Commission's view, on 25 January 2019 the Commission issued a reasoned opinion in which it requested that Member State to put an end to those infringements.

16 The Kingdom of Denmark replied to that reasoned opinion by letter of 22 March 2019, in which it maintained its position.

17 In those circumstances, the Commission decided to bring the present action.

18 By decisions of the President of the Court of 8 and 18 September 2020, the Hellenic Republic and the Republic of Cyprus were granted leave to intervene in support of the form of order sought by the Commission.

The action

19 By its action, the Commission complains that the Kingdom of Denmark has failed to fulfil its obligations under Article 13 of Regulation No 1151/2012 and has infringed the principle of sincere cooperation laid down in Article 4(3) TEU.

The first complaint, alleging infringement of the obligations arising from Article 13 of Regulation No 1151/2012

Arguments of the parties

20 In support of its action, the Commission submits that Regulation No 1151/2012 provides extensive protection for registered names. It argues that, in order to ensure the marketing of agricultural products in compliance with conditions of fair competition and intellectual property rights, Article 12(1) of that regulation grants operators a positive right to use a registered name if the products in question conform to the applicable product specification. It maintains that Article 13(1) of that regulation provides for 'negative' protection by defining the conditions under which the use of a registered name is unlawful and, more specifically, by expressly prohibiting the production and sale of infringing products, that is to say, products for which a PDO or PGI is used even though they do not conform to the applicable product specification. The purpose of that provision, according to the Commission, is to protect producers who have made efforts to guarantee the qualities expected of products covered by a PDO or PGI.

21 Consequently, it submits, where Danish undertakings use the PDO 'Feta' to designate cheese produced from cow's milk and outside the geographical area referred to in Regulation No 1829/2002, and export that cheese to third countries, they infringe Article 13(1) of Regulation No 1151/2012.

22 In the Commission's view, that conclusion is consistent with the objectives set out in Article 1(1) and Article 4 of Regulation No 1151/2012, from which it is apparent that that regulation seeks to protect the intellectual property rights conferred by registered names and to ensure that products enjoying such protection may be marketed under conditions of fair competition. It submits that recitals 3, 5 and 18 of that regulation emphasise the fundamental role of registered names in creating the conditions for fair competition between EU undertakings, in clearly communicating the characteristics of quality products in order to ensure that the producers of those products receive a fair price which covers their production costs, and in preventing unfair competition from undertakings which use such names unlawfully and thereby harm the reputation and value of those names.

23 According to the Commission, it is therefore irrelevant whether products which unlawfully use PDOs are marketed in the European Union or exported to third countries. It maintains that the practice of Danish undertakings makes it possible for them, in breach of Article 13(1) of Regulation No 1151/2012, to enjoy undue advantages to the detriment of the effort made by farmers and undertakings producing authentic feta, and satisfies all the criteria for unlawful use

of a registered name, that is, the direct commercial use and exploitation of the PDO's reputation, the unlawful use of the PDO, and a resemblance between authentic feta and the product at issue by reason of a misleading indication, used inter alia on the inner packaging, regarding the provenance of the product.

24 In its reply, the Commission states that that practice constitutes an infringement of an intellectual property right protected by the European Union, and the holders of that right are farmers in the European Union. It submits that that infringement is taking place in the territory of the European Union, where the cheese unlawfully labelled as feta is produced by EU producers. According to the Commission, it creates a distortion of competition between EU operators and generates its negative effects within the European Union.

25 Therefore, the Commission argues, by not taking administrative or judicial steps to prevent or stop the production in its territory and sale of infringing goods, as required by Article 13(3) of Regulation No 1151/2012, the Kingdom of Denmark is failing to ensure uniform protection of intellectual property rights, which is an important objective of that regulation, as is apparent from Article 4 thereof and from the choice of Article 118 TFEU as the legal basis. It maintains that the practice seriously disrupts the proper functioning of the internal market and prevents the objectives of that regulation from being achieved.

26 The Hellenic Republic, supporting the position of and the form of order sought by the Commission, submits, inter alia, that the wording of Article 13(3) of Regulation No 1151/2012 is clear in that it prohibits the counterfeiting of products covered by a PDO, regardless of their intended use, since there is nothing in that regulation which distinguishes between products intended for export to third countries and those intended for the internal market.

27 It argues that the EU legislature introduced the provision contained in Article 13(3) of Regulation No 1151/2012, which had no equivalent in the previous regulations, with the aim of simplifying and strengthening the system of protection for PDOs and PGIs, by imposing an obligation on Member States to take, on their own initiative, the steps necessary to prevent or stop the unfair use of PDOs in respect of products produced or marketed in their territory. Thus, it maintains that that provision makes each Member State responsible for ensuring compliance with Regulation No 1151/2012 in its territory and defines the scope of the prohibition on the unfair use of PDOs.

28 Furthermore, the Hellenic Republic submits that Regulation No 1151/2012 establishes, in Articles 36 and 37 thereof, the procedures for the controls to be performed by the competent authorities of the Member States to verify that a product complies with the corresponding product specification before it is placed on the market, which confirms that the EU legislature had no intention of excluding from the scope of that regulation products which are produced in the European Union and intended to be placed on the market of a third State. Moreover, it argues, any other interpretation would make any control impossible.

29 The Hellenic Republic also contends that Regulation No 1151/2012 expressly and clearly sets out its objectives in Article 1(1) and Article 4 thereof, from which it follows that the objective of that regulation is to help producers obtain fair remuneration for their effort and for the costs they incur in ensuring compliance with the product specification in terms of quality, and that that objective is attained by means of fair competition between producers, the availability to consumers of reliable information and respect for intellectual property rights.

30 The Republic of Cyprus, also supporting the position of and the form of order sought by the Commission, submits inter alia that Regulation No 1151/2012 establishes an exhaustive system for the protection of PDOs and PGIs as intellectual property rights. It argues that the protection of those rights does not stop at the borders of the internal market, as is apparent from the nature of such rights, from the provisions of that regulation, in particular Article 36 thereof, and from Regulation No 608/2013. It maintains that the Kingdom of Denmark is thus required to perform controls on its market in accordance with the procedures laid down by EU law and not to promote infringement of PDOs and PGIs and the marketing of infringing products such as 'Danish Feta'.

31 According to the Republic of Cyprus, the production in a Member State and export of products bearing on their outer packaging the indication of a PDO in respect of which they do not comply with the product specification constitutes commercial use, as referred to in Article 13(1)(a) of Regulation No 1151/2012, made in the territory of the European Union. In its view, it is clear from Article 13(3) of that regulation that the Member States are required to protect PDOs from the practices set out in paragraph 1 of that article not only as regards the marketing of the products at issue in their territory, but also as regards their production. It submits that the Kingdom of Denmark's claim that that regulation is not territorially applicable is therefore unfounded.

32 Furthermore, the Republic of Cyprus argues that the practice of the Danish authorities is contrary to the spirit of Regulation No 1151/2012 and to the protection of the PDO itself as an intellectual property right, and is detrimental to the prospects for international protection of PDOs, which is also contrary to the objectives pursued by that regulation.

33 The Kingdom of Denmark, which contends that the action should be dismissed, challenges the Commission's first complaint by maintaining that Regulation No 1151/2012 does not apply to exports to third countries.

34 It submits, in the first place, that the wording of the provisions of Regulation No 1151/2012 does not make it possible to determine whether the obligations of the Member States laid down in that regulation apply only to products placed on the EU market or whether they extend to products intended for export to third countries, since Regulation No 1151/2012 does not contain any provision mentioning such exports.

35 In that regard, the Kingdom of Denmark argues that, unlike Regulation No 1151/2012, other regulations which are closely related to it, such as Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ 2014 L 84, p. 14), Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ 2008 L 39, p. 16), and 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), expressly provide that the rules which they lay down apply to products produced in the European Union for export, which is an indication that the EU legislature did not consider it appropriate to include such a rule when adopting Regulation No 1151/2012.

36 In the second place, according to the Kingdom of Denmark, it is apparent from the objectives of Regulation No 1151/2012 that it is intended to establish a system of protection for products placed on the internal market. It submits that is clear from Article 1(1), read in conjunction with recital 2 of that regulation, that that article concerns buyers and consumers in the European Union. In its view, this is supported by Article 1(1)(d) of that regulation, from which it is apparent that the information on the product characteristics and farming attributes of those products and foodstuffs contributes to ensuring the integrity of the internal market. The Kingdom of Denmark maintains that, in addition to limiting the scope of Regulation No 1151/2012, Article 1 thereof and the statements in the preamble to that regulation show that the object of the protection conferred by that regulation is the products which are placed on the internal market. That position, it argues, is also supported by Article 13(1)(d) of that regulation, which provides that registered names must be protected against any other practice liable to mislead the consumer, namely the EU consumer, as to the true origin of the product.

37 Furthermore, the Kingdom of Denmark submits that Regulation No 1151/2012 draws a clear distinction between measures for the protection of PDOs and PGIs, which may be applied at EU level, and those which must be applied in order to ensure similar protection in third countries. It contends that it is apparent, in that regard, from recital 20 of that regulation that comparable protection in third countries requires the creation of mechanisms in the framework of the WTO or multilateral and bilateral agreements.

38 According to the Kingdom of Denmark, the objective of Regulation No 1151/2012 consisting in ensuring conditions of fair competition for producers of products using PDOs or PGIs does not allow the protection provided for by that regulation to be extended to markets outside the European Union. In its view, the link between that objective and EU consumers is apparent from recital 3 of that regulation, which indicates that the way to ensure that producers are fairly rewarded for their effort is to put indications on products which enable consumers to recognise them on the market, 'consumers' being understood as EU consumers and 'market' as the internal market.

39 In the third place, the Kingdom of Denmark submits that Regulation No 1151/2012 does not address the treatment of PDOs and PGIs for products produced in the European Union but intended for export to third countries, whereas, during the *travaux préparatoires* preceding its adoption, first, the Committee of the Regions had recommended adopting 'specific measures to be taken in order to avoid the sale within the EU or export to non-EU countries of products whose labelling does not comply with the legislation governing the quality of EU agricultural products' and, secondly, the European Parliament had proposed inserting a provision in Article 13 empowering the Commission to adopt delegated acts concerning the definition of the actions to be implemented by Member States in order to prevent the marketing in the European Union or the export to third countries of products not labelled in conformity with that regulation. In its view, those circumstances support an interpretation according to which the scope of Regulation No 1151/2012 is restricted to products placed on the internal market, by showing that the EU legislature refrained from addressing in that regulation the issue of how products produced in the European Union but intended for export to third countries are to be treated.

40 Similarly, it maintains that the interpretation according to which the obligation of Member States to prevent or stop the unlawful use of a PDO or PGI does not apply to products intended for export to third countries is supported by the situation prior to the entry into force of Regulation No 1151/2012. It argues that, as the Court found in its judgment of 4 December 2019, *Consorzio Tutela Aceto Balsamico di Modena* (C-432/18, EU:C:2019:1045, paragraph 27), the system for the

protection of PGIs and PDOs for agricultural products and foodstuffs laid down in 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), and in Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12), was reproduced, without any substantive changes, in Article 13 of Regulation No 1151/2012.

41 In the fourth and last place, the Kingdom of Denmark submits that the principle of legal certainty precludes a broad interpretation of Article 13(3) of Regulation No 1151/2012, since the EU legislature did not expressly provide in that regulation that the obligations of the Member States under Regulation No 1151/2012 extend to products produced in the European Union but intended to be marketed in third countries.

42 In its rejoinder, the Kingdom of Denmark states, with regard to the wording of Article 13(3) of Regulation No 1151/2012, that it shares the Commission's view that the term 'produced' contained in that provision shows that the Danish authorities are under an obligation to prevent the use of the PDO 'Feta' already at the time when the cheese is produced. It maintains that that obligation applies, however, in the event of unlawful use of a protected name, which is the case where the cheese is intended to be marketed and consumed in the internal market, but not where that cheese is intended for export to a third country. In its view, that conclusion is also supported by the objective of that regulation, as set out in Article 4 thereof, to ensure uniform protection of the names as an intellectual property right 'in the territory of the Union'.

43 The Kingdom of Denmark adds that consumer protection is, admittedly, only one of several equally important objectives, but that the protection of intellectual property rights is nonetheless not the main objective of that regulation. It submits that the fact that Regulation No 1151/2012 is intended, inter alia, to ensure such protection does not in itself lead to the conclusion that that protection extends beyond the internal market.

Findings of the Court

44 By its first complaint, the Commission alleges, in essence, that the Kingdom of Denmark has failed to fulfil its obligations under Article 13 of Regulation No 1151/2012, since it has failed to take appropriate steps to prevent or stop the use by Danish dairy producers of the name 'Feta' to designate cheese produced in its territory from cow's milk, and therefore not complying with the product specification for the PDO 'Feta', that cheese then being exported to third countries.

45 It should be noted at the outset that the Kingdom of Denmark does not deny the practice which the Commission alleges against it. That Member State nevertheless disputes the claim that that practice constitutes a failure to fulfil the obligations arising from Article 13 of Regulation No 1151/2012, on the ground that the scope of that regulation does not extend to products exported to third countries, since the EU legislature did not, according to the Kingdom of Denmark, intend to extend the prohibition on the use of PDOs to products which do not comply with the applicable product specification and are exported to third countries where the European Union has not concluded any multilateral or bilateral agreement regarding protection of PDOs.

46 In accordance with the Court's settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 32 and the case-law cited).

47 As regards, in the first place, the wording of Article 13 of Regulation No 1151/2012, it is apparent from paragraph 1(a) thereof that 'any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name' is prohibited. It follows from the use of the words 'any use' that the use of a registered name to designate products not covered by the registration which are produced in the European Union and intended for export to third countries is not excluded from that prohibition.

48 In addition, Article 13(3) of Regulation No 1151/2012 requires Member States to take 'appropriate administrative and judicial steps to prevent or stop the unlawful use of [PDOs] and [PGIs], as referred to in paragraph 1, that are produced or marketed in that Member State'. The latter conjunction 'or' indicates that that obligation applies not only to products marketed in the Member State concerned but also to those which are produced there. Those words thus confirm that the use of a registered name to designate products not covered by the registration which are produced in the European Union and intended for export to third countries is not excluded from the prohibition laid down in Article 13(1)(a) of that regulation.

49 In the present case, it is not disputed that Danish producers are making direct commercial use, within the meaning of Article 13(1)(a) of Regulation No 1151/2012, of the PDO 'Feta' to designate cheese which they produce in the Kingdom of Denmark and which, accordingly, is not covered by the registration for that PDO, and that the Danish authorities are not taking any administrative or judicial steps to prevent or stop that use.

50 As regards, in the second place, the context in which Article 13 of Regulation No 1151/2012 occurs, it should be noted that, as the Commission submits, that regulation was adopted on the basis, inter alia, of the first paragraph of Article 118 TFEU, which empowers the European Parliament and the Council to establish, in the context of the establishment and functioning of the internal market, measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the European Union.

51 Thus, PDOs and PGIs are protected as an intellectual property right by Regulation No 1151/2012 and in particular by Article 13 thereof, as is confirmed by Article 4(b) of that regulation, according to which a scheme for PDOs and PGIs is established in order to help producers of products linked to a geographical area by ensuring uniform protection of the names as an intellectual property right in the territory of the European Union. Moreover, as the Republic of Cyprus submits, PDOs and PGIs also come under intellectual property rights for the purposes of Regulation No 608/2013, as is apparent from Article 2(1)(d) and Article 2(4)(a) thereof.

52 The use of a PDO or PGI to designate a product produced in the territory of the European Union which does not comply with the applicable product specification impairs, within the European Union, the intellectual property right constituted by that PDO or PGI, even if that product is intended for export to third countries.

53 Furthermore, as regards also the context in which Article 13 of Regulation No 1151/2012 occurs, it should be noted that Articles 36 and 37 thereof, as amended by Regulation 2017/625, require the Member States, inter alia, to carry out verification in their territory that the product complies with the corresponding product specification before it is placed on the market. Those provisions, since as they do not exclude from such verification products intended for export, confirm that the obligation on Member States, laid down in Article 13(3) of that regulation, to take appropriate administrative or judicial steps to prevent or stop the unlawful use of a PDO or PGI also applies to such products.

54 In the third place, as regards the objectives pursued by Regulation No 1151/2012, it should be noted that they are clearly set out in Articles 1 and 4 of that regulation. According to the first of those provisions, that regulation aims to help producers of agricultural products and foodstuffs to communicate the product characteristics and farming attributes of those products and foodstuffs to buyers and consumers, thereby ensuring fair competition for farmers and producers of agricultural products and foodstuffs having value-adding characteristics and attributes, the availability to consumers of reliable information pertaining to such products, respect for intellectual property rights and the integrity of the internal market. More specifically, as regards PDOs and PGIs, the objective, according to the second of those provisions, is to help producers of products linked to a geographical area by securing fair returns for the qualities of their products, by ensuring uniform protection of the names as an intellectual property right in the territory of the European Union, and by providing clear information on the value-adding attributes of the product to consumers.

55 Recital 18 of Regulation No 1151/2012 also states that the specific objectives of protecting designations of origin and geographical indications are securing a fair return for farmers and producers for the qualities and characteristics of a given product, or of its mode of production, and providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices.

56 Furthermore, it is apparent from the Court's case-law that 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 (judgments of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier*, C-490/19, EU:C:2020:1043, paragraph 35 and the case-law cited, and, by analogy, of 9 September 2021, *Comité Interprofessionnel du Vin de Champagne*, C-783/19, EU:C:2021:713, paragraph 49).

57 Since the Kingdom of Denmark claims that it is apparent from those objectives that Regulation No 1151/2012 aims to establish a system for the protection of PDOs and PGIs for products placed on the internal market, the consumers concerned being EU consumers, it should be noted that it is indeed those consumers, and not those of third countries, who are covered by that regulation. Regulation No 1151/2012, adopted on the basis of Article 118 TFEU, concerns the functioning of the internal market and is intended, as the Kingdom of Denmark submits, to ensure the integrity of the internal market and the provision of information to EU consumers.

58 It should also be noted that the objectives of informing consumers and of ensuring that producers secure fair returns for the qualities of their products are linked, since the purpose of informing consumers, as is apparent from the case-law referred to in paragraph 56 above, is in particular to enable agricultural operators to secure higher incomes in return for a genuine effort to improve quality.

59 However, the fact remains that the objective of ensuring that producers secure fair returns for the qualities of their products is in itself, as is apparent from recital 18 and Article 4(a) of Regulation No 1151/2012, an objective pursued by that regulation. The same applies to the objective of ensuring respect for intellectual property rights set out in Article 1(c) of that regulation.

60 It is clear that the use of the PDO 'Feta' to designate products produced in the territory of the European Union which do not comply with the product specification for that PDO undermines those two objectives, even if those products are intended for export to third countries.

61 It thus follows from the wording of Article 13 of Regulation No 1151/2012 as well as the context in which that provision occurs and the objectives pursued by that regulation that, as the Commission submits, such use constitutes conduct prohibited by Article 13(1)(a) of Regulation No 1151/2012.

62 None of the other arguments put forward by the Kingdom of Denmark is capable of calling that interpretation into question.

63 In the first place, as regards the fact that Regulation No 1151/2012, unlike other regulations in the field of protection of registered names and indications, such as Regulations No 110/2008 and No 251/2014, does not expressly provide that it also applies to products produced in the European Union for export to third countries, it should be recalled that the provisions of EU law on the protection of registered geographical names and indications, which form part of the EU's horizontal quality policy, must be interpreted in such a way as to ensure that those provisions are applied consistently (judgment of 20 December 2017, *Comité Interprofessionnel du Vin de Champagne*, C-393/16, EU:C:2017:991, paragraph 32). An interpretation of Regulation No 1151/2012 as excluding agricultural products and foodstuffs intended for export to third countries from the protection which it establishes, whereas Regulations No 110/2008 and No 251/2014, relied on by the Kingdom of Denmark, ensure the same protection for the products which they cover, including where they are produced in the European Union for export to third countries, would not satisfy that requirement of consistency, in the absence of justification for such a difference.

64 As regards, in the second place, the claim based on recitals 20 and 27 of Regulation No 1151/2012, it should be noted that they can in no way be understood as meaning that the protection of products produced in the European Union and exported to third countries is conditional on the existence of a mechanism envisaged for that purpose in the framework of the WTO or multilateral and bilateral agreements. The purpose of the latter agreements is to ensure such protection by and in third countries, whereas Regulation No 1151/2012 provides for a uniform and exhaustive system of protection for PDOs and PGIs in the European Union (see, by analogy, judgment of 8 September 2009, *Budějovický Budvar*, C-478/07, EU:C:2009:521, paragraph 114).

65 As regards, in the third place, the factors relied on by the Kingdom of Denmark concerning the origin of Regulation No 1151/2012 and the situation prior to its adoption, it must be observed, first, that the fact that the recommendation of the Committee of the Regions and the proposal of the European Parliament referred to in paragraph 39 above did not result in an express statement

in that regulation that the latter also applies to products produced in the European Union for export to third countries is not, in itself, sufficient to establish that the EU legislature ultimately refrained from including those products within the scope of Regulation No 1151/2012. Secondly, it must be stated that a comparison of the system for protection of PDOs and PGIs for agricultural products and foodstuffs resulting from Regulation No 2081/92 and then from Regulation No 510/2006, with that resulting from Regulation No 1151/2012 does not reveal anything to support the claim that the EU legislature, in adopting that regulation, intended to exclude from its scope products exported to third countries.

66 Finally, as regards, in the fourth place, compliance with the principle of legal certainty, it is true that Regulation No 1151/2012 does not expressly state that it also applies to products produced in the European Union for export to third countries. However, in the light, in particular, of the general and unambiguous nature of Articles 13, 36 and 37 of Regulation No 1151/2012, which do not provide for any derogation in respect of such products, and of the fact that the objectives referred to in paragraph 59 above are clearly set out in Articles 1 and 4 of that regulation, it appears that Article 13(3) of Regulation No 1151/2012 is clear and unambiguous in that it requires Member States to take appropriate administrative and judicial steps aimed at preventing or stopping the use of PDOs or PGIs to designate products not complying with the applicable product specification which are produced in their territory, including where such products are intended for export to third countries.

67 In those circumstances, it must be concluded that, by failing to prevent or stop such use in its territory, the Kingdom of Denmark has failed to fulfil its obligations under Article 13(3) of Regulation No 1151/2012.

68 It follows that the first complaint must be upheld.

The second complaint, alleging infringement of the principle of sincere cooperation

Arguments of the parties

69 The Commission submits that, by allowing Danish dairy producers to produce and market cheese using the PDO 'Feta', the Kingdom of Denmark infringed Article 4(3) TEU, read in conjunction with Article 1(1) and Article 4 of Regulation No 1151/2012. First, it argues that that Member State deliberately infringed the obligations arising from Article 13 of that regulation, and indeed encouraged the unlawful use of that PDO. In the Commission's view, the Kingdom of Denmark thereby jeopardised the achievement of the objectives of that regulation, namely ensuring fair competition for farmers and producers of agricultural products and foodstuffs having value-adding characteristics and attributes, helping producers of products linked to a geographical area to receive fair returns for the qualities of their products, and ensuring protection of intellectual property rights for all protected names in the territory of the European Union.

70 Secondly, it maintains that the Kingdom of Denmark, by failing to prevent or stop the infringement of the rights of the PDO 'Feta' which occurs where Danish dairy producers export cheese unlawfully using that PDO to third countries, has weakened the European Union's position in international negotiations aimed at ensuring the protection of EU quality schemes, by undermining the coherence of the European Union's external representation.

71 In reply to a written question from the Court, the Commission argued that the Kingdom of Denmark has displayed conduct the effects of which go beyond the failure to fulfil the substantive obligation arising from Article 13(3) of Regulation No 1151/2012.

72 The Hellenic Republic submits, inter alia, that the practice applied by the Kingdom of Denmark has serious consequences, both at national level for producers of feta, and at EU level in the context of international negotiations. It argues that the conduct referred to in that complaint of the Commission is distinct from the conduct consisting in an infringement of the specific obligations set out in Article 13 of Regulation No 1151/2012. In its view, the Kingdom of Denmark has systematically and for considerable time evaded its obligations by relying on the dilatory and abusive argument that the products at issue were intended for export to third countries, and it did not take any steps to nullify the unlawful consequences of that illegal conduct.

73 The Republic of Cyprus also submits that the practice at issue is detrimental to the prospects for international protection of PDOs. It argues that such practice contributes to a PDO becoming a generic designation in third countries, thereby reducing the Commission's negotiating power. According to the Republic of Cyprus, the Kingdom of Denmark's tolerance of that practice constitutes an infringement of Article 4(3) TEU. It maintains that such failure to fulfil obligations should be established in the event that the Court finds that the obligations arising from Article 13(3) of Regulation No 1151/2012 are unclear as regards control of products marketed in third countries.

74 The Kingdom of Denmark disputes that complaint, arguing that the principle of sincere cooperation cannot be regarded as having been infringed either in the context of Article 1(1) and Article 4 of Regulation No 1151/2012, or independently, since a disagreement concerning the interpretation of EU law cannot constitute an infringement of that principle. In addition, it contends that the two complaints put forward by the Commission in support of its action concern the same conduct.

Findings of the Court

75 A failure to fulfil the general obligation of sincere cooperation following from Article 4(3) TEU may be found only in so far as it covers conduct distinct from that which constitutes the infringement of the specific obligations alleged against the Member State (see, to that effect, judgment of 17 December 2020, *Commission* v *Slovenia (ECB archives)*, C-316/19, EU:C:2020:1030, paragraph 121 and the case-law cited).

76 It must be stated in the present case that the Commission's complaint relating to the principle of sincere cooperation, in so far as that complaint alleges that the Kingdom of Denmark has infringed the obligations arising from Article 13 of Regulation No 1151/2012 and thereby jeopardised the achievement of the objectives pursued by that regulation, covers the same conduct as that which forms the subject matter of the first complaint, namely the failure to prevent or stop the use by Danish producers of the PDO 'Feta' to designate cheese which does not comply with the applicable product specification.

77 Moreover, the Commission has not established that the Kingdom of Denmark, other than by that failure, has encouraged the unlawful use of the PDO 'Feta'.

78 Similarly, although it is true that the export to third countries by EU producers of products unlawfully using a PDO is likely to weaken the European Union's position in international negotiations aimed at ensuring the protection of EU quality schemes, it has not been established, as the Advocate General observes, in essence, in point 95 of her Opinion, that the Kingdom of Denmark has taken any action or made any statements potentially having that effect, which would constitute conduct distinct from that which forms the subject matter of the first complaint.

79 It follows that the second complaint must be rejected.

80 In the light of all the foregoing considerations, it must be held that (i) 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 has failed to fulfil its obligations under Article 13(3) of Regulation No 1151/2012, and (ii) the remainder of the action must be dismissed.

Costs

81 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 138(3) of those rules, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party. Since the Commission has applied for costs and the Kingdom of Denmark has been essentially unsuccessful, the latter must, having regard to the circumstances of the present case, be ordered to pay, in addition to its own costs, four fifths of the Commission's costs. The latter is to bear one fifth of its own costs.

82 Moreover, under Article 140(1) of the Rules of Procedure, the Member States which have intervened in the proceedings are to bear their own costs. Accordingly, the Hellenic Republic and the Republic of Cyprus are to bear their own costs.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Declares that, by failing to prevent or stop the use by Danish dairy producers of the protected designation of origin (PDO) 'Feta' to designate cheese which does not comply with the product specification for that PDO, the Kingdom of Denmark has failed to fulfil its obligations under Article 13(3) 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;**

2. **Dismisses the action as to the remainder;**

3. **Orders the Kingdom of Denmark to bear its own costs and to pay four fifths of the costs of the European Commission;**

4. **Orders the European Commission to bear one fifth of its costs;**

5. **Orders the Hellenic Republic and the Republic of Cyprus each to bear their own costs.**

[Signatures]