



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

15 April 2021 *

(Reference for a preliminary ruling – Protection of geographical indications and designations of origin for agricultural products and foodstuffs – Regulation (EU) No 1151/2012 – First subparagraph of Article 49(3) and second subparagraph of Article 49(4) – First subparagraph of Article 53(2) – Amendment to a product specification – Spreewald gherkins (Germany) ‘Spreewälder Gurken (PGI)’ – Amendments which are not minor – Opposition proceedings – Statement of opposition to the amendment application – Appeal against the decision granting that application – Concept of ‘legitimate interest’)

In Case C-53/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 19 December 2019, received at the Court on 3 February 2020, in the proceedings

Hengstenberg GmbH & Co. KG

v

Spreewaldverein eV,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra, D. Šváby, S. Rodin (Rapporteur) and K. Jürimäe, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Spreewaldverein eV, by D. Terheggen, Rechtsanwalt,
- the Greek Government, by E. Leftheriotou, A. Vasilopoulou and M. Tassopoulou, acting as Agents,

* Language of the case: German.

– the French Government, by A.-L. Desjonquères and C. Mosser, acting as Agents,
– the Austrian Government, by A. Posch, J. Schmoll and C. Drexel, acting as Agents,
– the European Commission, by M. Konstantinidis, B. Hofstötter and I. Naglis, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) 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), in conjunction with the first subparagraph of Article 53(2) thereof.
- 2 The request has been made in proceedings between Hengstenberg GmbH & Co. KG and Spreewaldverein eV, an association of all producers of ‘Spreewälder Gurken (PGI)’ (gherkins from the Spree Forest, Germany), for which a protected geographical indication is registered, concerning an application to amend the specification for that product, filed with the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office, Germany) (‘the DPMA’).

Legal context

European Union law

Regulation (EEC) No 2081/92

- 3 Article 7(3) 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) provides:

‘Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The competent authority shall take the necessary measures to consider these comments or objection within the deadlines laid down.’

Regulation (EC) No 510/2006

- 4 Article 7(2) of 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) is worded thus:

‘Any natural or legal person having a legitimate interest, established or resident in a Member State other than that applying for the registration or in a third country, may also object to the proposed registration by lodging a duly substantiated statement.

...’

Regulation No 1151/2012

- 5 Recitals 17 to 20 and 39 of Regulation No 1151/2012 state:

‘(17) The scope for designations of origin and geographical indications should be limited to products for which an intrinsic link exists between product or foodstuff characteristics and geographical origin. The inclusion in the current scheme of only certain types of chocolate as confectionery products is an anomaly that should be corrected.

(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.

(19) Ensuring uniform respect throughout the Union for the intellectual property rights related to names protected in the Union is a priority that can be achieved more effectively at Union level.

(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.

...

(39) In order to avoid creating unfair conditions of competition, any producer, including a third-country producer, should be able to use a registered name of a traditional speciality guaranteed, provided that the product concerned complies with the requirements of the relevant specification and the producer is covered by a system of controls. For traditional

specialities guaranteed produced within the Union, the Union symbol should be indicated on the labelling and it should be possible to associate it with the indication “traditional speciality guaranteed”.’

6 Article 1 of that regulation, entitled ‘Objectives’, provides in paragraph 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.’

7 Article 5(2) of that regulation is worded as follows:

‘For the purpose of this Regulation, “geographical indication” is a name which identifies a product:

- (a) originating in a specific place, region or country;
- (b) whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and
- (c) at least one of the production steps of which take place in the defined geographical area.’

8 Article 10(1) of the regulation provides as follows:

‘1. A reasoned statement of opposition as referred to in Article 51(2) shall be admissible only if it is received by the [European] Commission within the time limit set out in that paragraph and if it:

- (a) shows that the conditions referred to in Article 5 and Article 7(1) are not complied with;
- (b) shows that the registration of the name proposed would be contrary to Article 6(2), (3) or (4);
- (c) shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in point (a) of Article 50(2); or
- (d) gives details from which it can be concluded that the name for which registration is requested is a generic term.’

- 9 Article 49 of Regulation No 1151/2012, entitled ‘Application for registration of names’, provides, in paragraphs 2 to 4:

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

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

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

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

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

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

...’

- 10 Article 51 of that regulation, entitled ‘Opposition procedure’, provides in paragraph 1:

‘Within three months from the date of 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 with the Commission.

Any natural or legal person having a legitimate interest, established or resident in a Member State other than that from which the application was submitted, may lodge a notice of opposition with the Member State in which it is established within a time limit permitting an opposition to be lodged pursuant to the first subparagraph.

...’

- 11 Article 53(1) and (2) of the regulation states:

‘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.

...

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

...

(d) affect the defined geographical area;

...'

German law

- 12 The detailed rules for the participation of persons having a 'legitimate interest' in the procedure for registration of protected geographical indications and in the procedure applicable to applications for non-minor amendment of the specification of goods with such indications are laid down, in German law, in the second sentence of Paragraph 130(4) and in the second sentence of Paragraph 133 of the Gesetz über den Schutz von Marken und sonstigen Kennzeichen (Markengesetz) (Law on the protection of trade marks and other distinctive signs) of 25 October 1994 (BGBl. 1994 I, p. 3082; 'the MarkenG'), read in conjunction with Paragraph 132(1) thereof.
- 13 According to the information provided by the referring court, the second sentence of Paragraph 130(4) of the MarkenG provides that any person having a 'legitimate interest' who is established or resident in the territory of the Federal Republic of Germany may lodge an opposition to the application for registration of a protected geographical indication, within two months of the publication of that application, with the DPMA.
- 14 Furthermore according to the same information. Paragraph 132(1) of the MarkenG, which refers to the first subparagraph of Article 53(2) of Regulation No 1151/2012, provides that the second sentence of Paragraph 130(4) of the MarkenG applies, *mutatis mutandis*, to applications for non-minor amendments to the specification of a product covered by a protected geographical indication.
- 15 The referring court explains, furthermore, that, under the second sentence of Paragraph 133 of the MarkenG, read in conjunction with Paragraph 132(1) thereof, if the DMPA adopts, pursuant to the first sentence of Article 130(5) of the MarkenG, read in conjunction with Paragraph 132(1) thereof, a decision declaring that the application for amendment of the specification complies with the conditions laid down in Regulation No 1151/2012 and with the provisions adopted for implementing that regulation, the action brought against that decision is open to any person who has lodged an opposition to that application within the permitted timeframe or whose 'legitimate interest' is affected by that decision on account of the amendment published pursuant to the fourth sentence of Paragraph 130(5) of the MarkenG.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 16 Since 19 March 1999, the name ‘Spreewälder Gurken (PGI)’ has been registered as a protected geographical indication for fresh and processed ‘fruits, vegetables and cereals’ in the Commission’s register of protected designations of origin and protected geographical indications.
- 17 On 18 February 2012, Spreewaldverein applied to the DPMA for an amendment to the specification for the product concerned to change the production method for those gherkins, in particular by using certain food additives.
- 18 Following the publication on 22 August 2014 of the application for amendment, Hengstenberg, on 16 October 2014, lodged an opposition to the application.
- 19 By the decision of 10 September 2015, the DPMA found that the application for amendment of the specification was in accordance with Regulation No 1151/2012.
- 20 Hengstenberg brought an action against that decision before the Bundespatentgericht (Federal Patent Court, Germany), which dismissed the action on the grounds that, first, Hengstenberg did not have a ‘legitimate interest’ within the meaning of the second sentence of Paragraph 133 of the MarkenG, read in conjunction with Paragraph 132(1) thereof and, secondly, the action was, in any case, unfounded. Nevertheless, the Bundespatentgericht (Federal Patent Court) allowed an appeal to be lodged against its decision before the referring court.
- 21 The Bundespatentgericht (Federal Patent Court) held that a distinction must be drawn between two situations, depending on whether the opposition is declared against an application for registration of a protected geographical indication or is declared against an application to amend the specification of a product covered by such an indication, in which situation persons who are not established in the geographical area concerned and who are not authorised to use the protected name do not, in its view, show the ‘legitimate interest’ required. Neither the fact that an operator trades in products bearing a protected geographical indication nor the overall market and competitive situation is capable of establishing such a ‘legitimate interest’.
- 22 The Bundespatentgericht (Federal Patent Court) concluded that the only persons who could be affected by an alleged devaluation of a protected geographical indication or damage to the reputation or renown of the product concerned as a result of an amendment to the product’s specification were producers established in the geographical area of origin.
- 23 Ruling on the appeal lodged against the judgment of the Bundespatentgericht (Federal Patent Court), the Bundesgerichtshof (Federal Court of Justice, Germany) states, under the national legislation implementing Regulation No 1151/2012, that an action against a decision declaring that the application to amend the specification complies with the conditions laid down in that regulation is open to any person who has lodged an opposition to the application for amendment within the permitted timeframe or whose ‘legitimate interest’ is affected by the decision upholding that application.
- 24 The referring court considers that the concept of ‘legitimate interest’, pursuant to the second subparagraph of Article 49(4) of Regulation No 1151/2012 which must be satisfied by any person bringing an action against a decision granting an application for a non-minor amendment to a specification is not currently defined in EU law.

- 25 In addition, the referring court notes that it is for the national courts to rule on the lawfulness of an application to amend the specification of a product covered by a protected geographical indication 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' rights under EU law.
- 26 The question therefore arises whether, in the procedure applicable to an application for a non-minor amendment to the specification of a product with a protected geographical indication, any natural or legal person affected economically, in a real or potential manner – provided that such an effect is not entirely implausible – can show the 'legitimate interest' required in order to lodge an opposition to such an application or to bring an action against the decision upholding that application, since such a broad definition may conflict with the requirement that such a legitimate interest be legitimate and may not allow the corresponding opposition and appeal rights to be circumscribed sufficiently precisely.
- 27 In that context, the referring court asks whether the concept of 'legitimate interest' must be interpreted as meaning that only operators producing products or foodstuffs comparable to those for which a protected geographical indication is registered show such an interest. Furthermore, it considers that, for the purposes of identifying the group of operators which can show a 'legitimate interest', the criterion of the actual competitive situation could be applied.
- 28 Unlike the Bundespatentgericht (Federal Patent Court), the referring court considers that the location of a producer in the geographical area concerned is not to be regarded as the decisive criterion for a person to have a legitimate interest in lodging an opposition to an application for a non-minor amendment to the specification of a product with a protected geographical indication, in so far as compliance with such a specification must also be capable of being required by competing producers not established in that geographical area where such a non-minor amendment presents the risk that the quality or reputation of the product will no longer be attributed to its geographical origin contrary to Article 5(2) of Regulation No 1151/2012.
- 29 Finally, the referring court considers that the actual wording of Regulation No 1151/2012 does not support the approach that the concept of 'legitimate interest' must be interpreted differently in the context of the procedure for the registration of a protected geographical indication and in the context of the procedure applicable to applications for non-minor amendments to the specification of a product benefiting from such an indication.
- 30 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) In the procedure for a non-minor amendment of the specification, can any actual or potential – provided that it is not entirely implausible – economic effect on a natural or legal person be sufficient to establish the existence of the legitimate interest, within the meaning of the first subparagraph of Article 53(2), in conjunction with the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of [Regulation No 1151/2012], that is necessary for the purposes of an opposition to the application or an appeal against the favourable decision on the application?
- (2) If Question 1 is answered in the negative:

In the procedure for a non-minor amendment of the specification, does a legitimate interest within the meaning of the first subparagraph of Article 53(2), in conjunction with the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of [Regulation No 1151/2012] lie (only) with operators that produce products or foodstuffs comparable to those of operators for which a protected geographical indication is registered?

(3) If Question 2 is answered in the negative:

- (a) As regards the requirements governing a legitimate interest within the meaning of the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of [Regulation No 1151/2012], must a distinction be drawn between the registration procedure under Articles 49 to 52 of that regulation, on the one hand, and the procedure for amending the specification under Article 53 of [Regulation No 1151/2012], on the other, and,
- (b) in the procedure for a non-minor amendment of the specification, does a legitimate interest within the meaning of the first subparagraph of Article 53(2), in conjunction with the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4), of [Regulation No 1151/2012] therefore lie only with producers that produce or specifically intend to produce products in the geographical area which comply with the product specification, so that “non-local” operators are automatically excluded from the outset from claiming a legitimate interest?

Consideration of the questions referred

The first question

- 31 By its first question, the referring court asks, in essence, whether the concept of ‘legitimate interest’, within the meaning of the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of Regulation No 1151/2012, read in conjunction with the first subparagraph of Article 53(2) thereof, must be interpreted as meaning that, in the context of the procedure applicable to applications for non-minor amendments to the specification of a product covered by a protected geographical indication, any natural or legal person affected economically, actually or potentially – provided that such an effect is not entirely implausible – by the amendments applied for may establish the ‘legitimate interest’ required to lodge an opposition to the application for amendment submitted or to bring an action against the decision granting that application.
- 32 As a preliminary point, it should be noted that applications for a non-minor amendment of the specification of a product with a protected geographical indication, such as that at issue in the main proceedings, are, by virtue of the reference made in the first subparagraph of Article 53(2) of Regulation No 1151/2012, subject to the same procedure as that applicable to registration of a protected geographical indication (see, to that effect, judgment of 29 January 2020, *GAEC Jeanningros*, C-785/18, EU:C:2020:46, paragraph 29), so that the concept of ‘legitimate interest’, within the meaning of the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of Regulation No 1151/2012, read in conjunction with the first subparagraph of Article 53(2) thereof, calls for an identical interpretation, whether the procedure initiated is a procedure for registration of a protected geographical indication or a procedure for requesting a non-minor amendment to the product specification covered by such an indication.

- 33 As regards the interpretation of the concept of ‘legitimate interest’ as referred to in the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of Regulation No 1151/2012, read in conjunction with the first subparagraph of Article 53(2) thereof, it should be noted that that concept is not defined in those provisions or in any other provision of that regulation.
- 34 That said, in accordance with 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 and the origin of that legislation.
- 35 As regards, in the first place, the wording of the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of Regulation No 1151/2012, as well as the first subparagraph of Article 53(2) thereof, it is apparent from those provisions that ‘any natural or legal person having a legitimate interest’ may exercise a right to lodge an opposition and to bring an action.
- 36 Although the use of the words ‘legitimate interest’ does not provide any indication as to the criterion to be taken into consideration in order to determine the range of persons who may exercise the right to oppose in the context of the national opposition procedure the registration of a protected geographical indication or applications for non-minor amendments to the specification of a product with such an indication, the addition of the words ‘any natural or legal person’ to those provisions suggests, however, that the legislature did not intend to adopt a narrow interpretation of that range. Nonetheless, it is clear from that wording that that ‘legitimate interest’ is not reserved solely to those operators who produce products or foodstuffs comparable to those produced by operators whose products benefit from the protected geographical indication concerned, or only to those latter producers, to the exclusion of all others.
- 37 In the second place, as regards the context, it must be recalled that Regulation No 1151/2012 creates a system of division of powers, in the sense that, in particular, the decision to register a name as a protected geographical indication may be made by the Commission only if the Member State concerned has submitted to it an application for that purpose and that such an application may be made only if that Member State has checked that the application was justified. That system of division of powers is attributable particularly to the fact that registration of a protected geographical indication assumes that it has been verified that a certain number of conditions have been met, which requires, to a large extent, detailed knowledge of matters particular to that Member State, which the competent authorities thereof are best placed to check (see, to that effect, judgment of 29 January 2020, *GAEC Jeanningros*, C-785/18, EU:C:2020:46, paragraph 24 and the case-law cited).
- 38 In addition, it is apparent from Article 49(3) and the second subparagraph of Article 49(4) of Regulation No 1151/2012 that it is for the Member State to analyse the admissibility of the statement of opposition in the light of the grounds set out in Article 10(1) of that regulation. In that regard, it is provided in point (c) of that provision that a statement of opposition is admissible where it shows that the registration or amendment of the proposed designation would jeopardise the existence of an earlier name or trade mark, or the existence of products which have been legally on the market for at least five years preceding the date laid down in Article 50(2)(a) of that regulation.
- 39 Therefore, it follows from the foregoing that, in so far as the review of the application for registration or for a non-minor amendment of a protected geographical indication is essentially a matter for the Member State concerned, it is particularly necessary to open widely the possibility

for natural or legal persons who may benefit from or, on the contrary, suffer from an economic point of view from the registration or the non-minor amendment of the specification of a product to oppose it so that their arguments can be examined during the national opposition procedure.

- 40 That interpretation is borne out, in the third place, by the objectives pursued by Regulation No 1151/2012.
- 41 First, it is clear from Article 1(2) of Regulation No 1151/2012, read in the light of recitals 17, 18 and 20 of that regulation, that that regulation seeks to establish quality schemes which contribute to the quality of products and their method of production being recognised as factors of added value.
- 42 Secondly, it is clear from Article 1(1) of Regulation No 1151/2012, in the light of recitals 20 and 39 thereof, that that regulation is also intended to prevent the creation of conditions of unfair competition.
- 43 Additionally, the aim of the provisions of Regulation No 1151/2012 is to prevent the misuse of protected designations of origin and protected geographical indications, not only in the interests of consumers, but also in the interests of producers who have striven to guarantee the qualities expected of products lawfully bearing such indications (see, by analogy, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 38 and the case-law cited).
- 44 It should also be noted that recital 19 of that regulation states that uniform respect throughout the EU for the intellectual property rights related to names protected in the EU is a priority which can be achieved more effectively at EU level. Such an objective also militates in favour of a broad interpretation of the concept of ‘legitimate interest’. Such uniform respect presupposes that the conditions for registration of a protected geographical indication or of a non-minor amendment to the specification of a product benefiting from such protection are checked in a uniform manner from one Member State to another, which runs counter to a narrow interpretation of the concept of ‘legitimate interest’. Such an approach would run counter to the possibility afforded to a person established in a given Member State of lodging an opposition before the Commission against an application for registration or a non-minor amendment relating to a geographical indication falling within the territory of another Member State.
- 45 It follows from the foregoing that the broad interpretation of the concept of ‘legitimate interest’ is the most appropriate for pursuing those objectives, since it ensures that a wide range of persons may promote, by means of opposition or appeal, respect for the high quality and the method of production of specific products, while preventing producers whose products are covered by a registered name from enjoying a competitive advantage by lowering quality standards after registration of a non-minor amendment to the specification of the product concerned. Moreover, that interpretation is the most apt to enable the competent authority to be informed in order to determine, in the performance of its task provided for in the second subparagraph of Article 49(2) of Regulation No 1151/2012, whether the application for registration or a non-minor amendment fulfils the necessary conditions and to ascertain whether the characteristics of the products or foodstuffs have an inherent link with a territory.
- 46 Finally, in so far as the application for a non-minor amendment to the specification of a product with a protected geographical indication may, in accordance with the third subparagraph of Article 53(2)(d) of Regulation No 1151/2012, relate to the perimeter of the geographical area to

which the indication concerned relates, the interpretation according to which only producers located in that geographical area can show a ‘legitimate interest’ in order to oppose that amendment would deprive producers hitherto located outside that area, but who refuse to be subject to conditions in the specification of the product concerned, of the right to oppose an amendment which would have a significant effect on the method of producing their products.

- 47 In the fourth place, that interpretation is supported by the origins of Regulation No 1151/2012.
- 48 In that regard, it is apparent from Article 7(3) of Regulation No 2081/92, which was repealed by Regulation No 510/2006, itself repealed by Regulation No 1151/2012, that the right to object in the context of the procedure for registration of a protected geographical indication before the national authorities was open to ‘any legitimately concerned natural or legal person’, a concept which was interpreted by the Court as meaning that it included the existence of a legitimate economic interest (see order of 26 October 2000, *Molkerei Großbraunshain and Bene Nahrungsmittel v Commission*, C-447/98 P, EU:C:2000:586, paragraph 72).
- 49 Article 7(2) of Regulation No 510/2006 also provided that the right to oppose the registration of a protected geographical indication in the context of the registration procedure before the national authorities was open to ‘any natural or legal person having a legitimate interest’.
- 50 Such a concept also appears in the first subparagraph of Article 49(3) of Regulation No 1151/2012, which provides that ‘the Member State shall initiate a national opposition procedure that ensures adequate publication of the application and that provides for a reasonable period within which any natural or legal person having a legitimate interest and established or resident on its territory may lodge an opposition to the application’.
- 51 The choice of that concept reflects the desire of the EU legislature to allow a wide range of persons to exercise the right of opposition in the national procedure for opposing the registration of a protected geographical indication or in the procedure applicable to applications for a non-minor amendment to the specification of a product benefiting from such an indication.
- 52 In the fifth and final place, it should be emphasised that the existence of the right to lodge an opposition to the registration of a protected geographical indication or to a non-minor amendment of the specification of a product benefiting from such an indication must be examined on a case-by-case basis, depending on the specific characteristics of each situation. Furthermore, in order to prevent an abuse of that right, such an examination must make it possible to ascertain specifically whether the ‘legitimate interest’ invoked by a natural or legal person is not unlikely or hypothetical.
- 53 In the light of all the foregoing considerations, the answer to the first question referred must be that the first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) of Regulation No 1151/2012, read in conjunction with the first subparagraph of Article 53(2) thereof, must be interpreted as meaning that, in the context of the procedure applicable to applications for non-minor amendments to the specification of a product covered by a protected geographical indication, any natural or legal person affected economically, actually or potentially – provided that such an effect is not entirely implausible – by the amendments applied for may establish the ‘legitimate interest’ required to lodge an opposition to the application for amendment submitted or to bring an action against the decision granting that application, as long as the risk of harm to the interests of such a person is not purely improbable or hypothetical, which is for the referring court to ascertain.

The second and third questions

- 54 In view of the answer to the first question, there is no need to reply to the second and third questions.

Costs

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

The first subparagraph of Article 49(3) and the second subparagraph of Article 49(4) 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, in conjunction with the first subparagraph of Article 53(2), thereof, must be interpreted as meaning that, in the context of the procedure applicable to applications for non-minor amendments to the specification of a product covered by a protected geographical indication, any natural or legal person affected economically, actually or potentially – provided that such an effect is not entirely implausible – by the amendments applied for may establish the ‘legitimate interest’ required to lodge an opposition to the application for amendment submitted or to bring an action against the decision granting that application, as long as the risk of harm to the interests of such a person is not purely improbable or hypothetical, which is for the referring court to ascertain.

[Signatures]