

Court of Justice EU, 4 December 2019, Aceto Balsamico di Modena



PROTECTED DESIGNATION OF ORIGIN – GEOGRAPHICAL INDICATIONS

The protection of the name ‘Aceto Balsamico di Modena’ does not extend to the use of the non-geographical terms of that name such as ‘aceto’ and ‘balsamico’

- In the case of protection of a ‘compound’ name, the protection also applies to its constituent parts (in this case ‘aceto’ and ‘balsamico’) only if they are not generic or a common term

However, the Court has also held that, as regards a ‘compound’ name registered in accordance with Regulation No 2081/92, the fact that, for that name, there is no footnote, in the regulation registering that name, specifying that registration is not sought for one of the parts of that name does not necessarily mean that each of its parts is protected. The Court pointed out that, even if it may prove to be the case that it follows from Article 13 of Regulation No 2081/92 that, in the absence of specific circumstances pointing to the contrary, the protection afforded by that provision covers not only the compound name as a whole, but also each of its constituent parts, that will be the case only if that constituent part is not a generic or a common term (see, to that effect, judgment of 9 June 1998, Chiciak and Fol, C-129/97 and C-130/97, EU:C:1998:274, paragraphs 37 and 39).

[...]

It thus follows unequivocally from the recitals of Regulation No 583/2009 that the non-geographical terms of the PGI at issue, namely ‘aceto’ and ‘balsamico’, and their use in combination and in translation cannot benefit from the protection for the PGI ‘Aceto Balsamico di Modena’ that was granted by Regulation No 510/2006 and is now ensured by Regulation No 1151/2012.

• ‘aceto’ and ‘balsamico’ are common terms

Moreover, first, it is established that the term ‘aceto’ is a common term, as previously held by the Court (see, to that effect, judgment of 9 December 1981, Commission v Italy, 193/80, EU:C:1981:298, paragraphs 25 and 26). Second, the term ‘balsamico’ is the Italian translation of the adjective ‘balsamic’ which has no geographical connotation and which, in the case of vinegar, is commonly used to refer to a vinegar with a bitter-sweet flavour. It is therefore also a common term within the meaning of the case-law referred to in paragraph 26 of this judgment.

Source: curia.europa.eu

Court of Justice EU, 4 December 2019

(E. Regan, I. Jarukaitis (Rapporteur), E. Juhász, M. Ilešič and C. Lycourgos)

JUDGMENT OF THE COURT (Fifth Chamber)

4 December 2019 (*)

(Reference for a preliminary ruling — Protection of geographical indications and designations of origin for agricultural products and foodstuffs — Regulations (EC) No 510/2006 and (EU) No 1151/2012 — Article 13(1) — Regulation (EC) No 583/2009 — Article 1 — Registration of the name ‘Aceto Balsamico di Modena (PGI)’ — Protection of the non-geographical components of that name — Scope)

In Case C-432/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 12 April 2018, received at the Court on 2 July 2018, in the proceedings Consorzio Tutela Aceto Balsamico di Modena

v

Balema GmbH,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis (Rapporteur), E. Juhász, M. Ilešič and C. Lycourgos, Judges,

Advocate General: G. Hogan,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 23 May 2019,

after considering the observations submitted on behalf of:

– Consorzio Tutela Aceto Balsamico di Modena, by A. Ringle and A. Rinkler, Rechtsanwälte,

– Balema GmbH, by C. Eggers and C. Böhler, Rechtsanwälte,

– the German Government, by J. Möller, M. Hellmann and U. Bartl, acting as Agents,

– the Greek Government, by G. Kanellopoulos, A.-E. Vasilopoulou and E.-E. Krompa, acting as Agents,

– the Spanish Government, by A. Rubio González and L. Aguilera Ruiz, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

– the European Commission, by B. Eggers, D. Bianchi, B. Hofstötter and I. Naglis, acting as Agents,

after hearing the [Opinion of the Advocate General](#) at the sitting on 29 July 2019, gives the present

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1 of Commission Regulation (EC) No 583/2009 of 3 July 2009 entering a name in the register of protected designations of origin and protected geographical indications [Aceto Balsamico di Modena (PGI)] (OJ 2009 L 175, p. 7).

2 The request has been made in the context of a proceedings between Consorzio Tutela Aceto Balsamico di Modena (*‘the Consorzio’*), a consortium of producers of products designated by the name *‘Aceto Balsamico di Modena (PGI)’*, and Balema GmbH concerning the use by the latter of the term *‘balsamico’* on the labels of vinegar-based products which do not meet the specifications set for that protected geographical indication (*‘PGI’*).

Legal framework

Regulation (EC) No 510/2006

3 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) repealed and replaced 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). That regulation was in turn largely repealed and replaced with effect from 3 January 2013 by 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).

4 The second subparagraph of Article 3(1) of Regulation No 510/2006, the wording of which reproduced that of the second subparagraph of Article 3(1) of Regulation No 2081/92 and which now appears, in essence, in point (6) of Article 3 of Regulation No 1151/2012, provided: *‘For the purposes of this regulation, a “name that has become generic” means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff in the Community.’*

5 Article 7 of Regulation No 510/2006, headed *‘Objection/decision on registration’*, provided in paragraph 1 and in the first, third and fourth subparagraphs of paragraph 5 thereof:

‘1. Within six months from the date of publication in the Official Journal of the European Union [of the single document and the reference to the publication of the product specification], any Member State or third country may object to the registration proposed, by lodging a duly substantiated statement with the Commission.

...

5. If an objection is admissible ..., the Commission shall invite the interested parties to engage in appropriate consultations.

...

If no agreement is reached, the Commission shall take a decision in accordance with the procedure referred to [in Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23)], having regard to fair and traditional usage and the actual likelihood of confusion.

The decision shall be published in the Official Journal of the European Union.’

6 Those provisions have been reproduced, in essence, respectively, in the first subparagraph of Article 51(1), the first subparagraph of Article 51(3), Article 52(3)(b) and Article 52(4) of Regulation No 1151/2012.

7 Article 13(1) and (2) of Regulation No 510/2006, the wording of which reproduced, without any substantive changes, that of Article 13(1) and (3) of Regulation No 2081/92 and which now appears in Article 13(1) and (2) of Regulation No 1151/2012, provided:

‘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 in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;

(b) any misuse, imitation or evocation, even if the true origin of the product 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;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, 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.

Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to points (a) or (b) in the first subparagraph.

2. Protected names may not become generic.’

Regulation No 583/2009

8 As stated in the citations in its preamble, Regulation No 583/2009 was adopted on the basis of Regulation No 510/2006, in particular the third and fourth subparagraphs of Article 7(5) thereof.

9 Recitals 2 to 5, 7, 8 and 10 to 12 of Regulation No 583/2009 state:

‘(2) Germany, Greece and France submitted objections to the registration under Article 7(1) of Regulation [No 510/2006]. ...

(3) Germany’s objection referred in particular to the concern that the registration of “Aceto Balsamico di Modena” as a protected geographical indication would adversely affect other products that have been placed

lawfully on the market for at least five years and sold as Balsamessig/Aceto balsamico, as well as to the alleged generic character of these terms. ...

(4) France's objection concerned the fact that "Aceto Balsamico di Modena" does not have its own reputation that is distinct from that of "Aceto balsamico tradizionale di Modena", which has already been registered as a protected designation of origin under Council Regulation (EC) No 813/2000 [of 17 April 2000 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92 (OJ 2000 L 100, p. 5)]. France claims that consumers could be misled as to the nature and origin of the product in question.

(5) Greece stressed the importance of balsamic vinegar production in Greece, which is marketed under names such as "balsamico" or "balsamon" and the negative impact that registration of the name "Aceto Balsamico di Modena" would have on these products, which have been placed lawfully on the market for at least five years. Greece also maintains that the terms "aceto balsamico", "balsamic", etc. are generic.

...

(7) Given that no agreement was reached between France, Germany, Greece and Italy within the designated timeframe, the Commission must adopt a decision ...

(8) The Commission has requested the opinion of the scientific committee for designations of origin, geographical indications and certificates of specific character ... as to whether the conditions for registration were met. The committee stated in its unanimous opinion submitted on 6 March 2006 that the name "Aceto Balsamico di Modena" has an undeniable reputation on the national and international market, as demonstrated by its frequent use in numerous recipes in many Member States, and the many references to it on the internet, in the press and other media. "Aceto Balsamico di Modena" therefore meets the inherent condition for the product having a specific reputation linked to that name. The committee noted the fact that these products have co-existed on the market for hundreds of years. It also noted that "Aceto Balsamico di Modena" and "Aceto balsamico tradizionale di Modena" are different as regards their characteristics, customer base, usage, method of distribution, presentation and price, thereby ensuring the fair treatment of the producers in question and not misleading consumers. The Commission fully concurs with these points.

...

(10) It appears that Germany and Greece did not refer to the entire name, i.e. "Aceto Balsamico di Modena" in their objections regarding the generic nature of the name proposed for registration, but only to some elements of it, namely the words "aceto", "balsamico" and "aceto balsamico", or to translations thereof. However, protection is granted to the term "Aceto Balsamico di Modena" as a whole. Individual non-

geographical components of that term may be used, even jointly and also in translation, throughout the [European Union], provided the principles and rules applicable in the [European Union]'s legal order are respected.

(11) In the light of the above, the name "Aceto Balsamico di Modena" should be entered in the register of protected designations of origin and protected geographical indications.

(12) The measures provided for in this regulation are in accordance with the opinion of the Standing Committee on Protected Geographical Indications and Protected Designations of Origin.'

10 Article 1 of Regulation No 583/2009 provides that 'the name contained in Annex I to this Regulation shall be entered in the register'. That annex refers to 'Aceto Balsamico di Modena (PGI)'.

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

11 Balema produces and markets vinegar-based products made from wines from the Baden region (Germany), which it has been selling for at least 25 years. The labels of those products bear the terms 'Balsamico' and 'Deutscher balsamico', among others, which are included on those labels under the legends 'Theo der Essigbrauer, Holzfassreifung, Deutscher balsamico traditionell, naturtrüb aus badischen Weinen' (Theo the vinegar brewer, maturation in wooden barrels, German balsamic vinegar, traditional, naturally cloudy, made from Baden wines) or '1. Deutsches Essig-Brauhaus, Premium, 1868, Balsamico, Rezeptur No 3' (first German vinegar brewery, premium, 1868, balsamic, recipe No 3).

12 The Consorzio, considering that the use by Balema of the term 'Balsamico' infringes the PGI 'Aceto Balsamico di Modena', sent it a letter of formal notice. In response, Balema brought an action in the German courts seeking a negative declaration of its obligation to refrain from using that term for vinegar-based products produced in Germany, in the form of the labels referred to in the preceding paragraph. Given that that action was dismissed at first instance, that company lodged an appeal, which was upheld on the grounds, in particular, that that use did not infringe point (b) of the first subparagraph of Article 13(1) of Regulation No 1151/2012, as the protection granted to that PGI by Regulation No 583/2009 was conferred only on the entire name 'Aceto Balsamico di Modena'.

13 Seised of an appeal on a point of law lodged by the Consorzio against that decision, the Bundesgerichtshof (Federal Court of Justice, Germany) considers that the success of that action depends on whether the use of the term 'Balsamico' or the phrase 'Deutscher balsamico' infringes point (a) or (b) of the first subparagraph of Article 13(1) of Regulation No 1151/2012, which entails determining first of all whether the protection granted for the name 'Aceto Balsamico di Modena' by Article 1 of Regulation No 583/2009 covers only that entire name or extends to the use of the individual non-geographical terms thereof.

14 The referring court considers that it is clear from the second subparagraph of Article 13(1) of Regulation No 1151/2012 and the case-law of the Court of Justice that the protection of a name that consists of several terms, registered as a designation of origin or geographical indication, may extend to the individual terms of which it consists. However, the scope of protection of a PGI made up of several elements can legitimately be restricted by the act registering the name concerned. The referring court also considers that the Commission's insertion, in the recitals of regulations registering protected names, of comments that restrict the scope of protection does not constitute an unlawful derogation from Regulation No 1151/2012, as the Commission is authorised, in accordance with that regulation, to take a decision on registration in cases in which an opposition has been lodged and an agreement has not been reached.

15 The referring court takes the view that, in the present case, recitals 3, 5 and 10 of Regulation No 583/2009 militate in favour of a restriction of the scope of protection to the name '*Aceto Balsamico di Modena*' as a whole, excluding its individual non-geographical components. In addition, that court considers that, although, for the protected designations of origin ('PDOs') '*Aceto balsamico tradizionale di Modena*' and '*Aceto balsamico tradizionale di Reggio Emilia*', registered by Regulation No 813/2000, the lawfulness of the free use of the non-geographical components of those entire names is, in the absence of any reference in that regard in the regulation registering them, to be assessed in each particular case on the basis of point (b) of the first subparagraph of Article 13(1) and the second subparagraph of Article 13(1) of Regulation No 1151/2012, it is nonetheless not contradictory, in the case of the PGI at issue before it, to accept that its protection has been restricted by Regulation No 583/2009, as the absence of clarification to that effect in the regulation registering those PDOs could simply be attributable to the fact that there was no objection.

16 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does the protection of the entire name "Aceto Balsamico di Modena" extend to the use of the individual non-geographical components of the term as a whole ("Aceto", "Balsamico", "Aceto Balsamico")?'

The request for the oral procedure to be reopened

17 Following the delivery of the Advocate General's Opinion, the Consorzio asked the Court, by letter of 7 August 2019, to order the reopening of the oral part of the procedure. In support of its request, the Consorzio claims, in essence, that the Advocate General's Opinion is based on new elements, which have not yet been debated between the parties, relating to the registration of the PDOs '*Aceto balsamico tradizionale di Modena*' and '*Aceto balsamico tradizionale di Reggio Emilia*' and that common terms could be at issue, and that the proposed answer does not address the real issue in the case or allow the referring court properly to resolve the dispute pending before it. It also follows from that

Opinion that the Court does not have sufficient information to give a ruling.

18 Pursuant to Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be decisive for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

19 That is not the situation in the present case. In addition to the fact that the existence of a new fact is not alleged, the Consorzio and the other parties who have participated in this procedure have been able to set out, during both the written and oral part of that procedure, the arguments in fact and in law which they considered relevant to answering the question referred. In that regard, it should be noted, in particular, with regard to the alleged new elements to which the Consorzio refers, that the first element was expressly considered by the referring court in its reference for a preliminary ruling and that the second element was raised by the Commission, among others, in its written observations and was the subject of a written question put by the Court to the parties to be answered at the hearing. Therefore, the Court considers, after hearing the Advocate General, that it has all the necessary elements at its disposal to rule and that the case should not be decided on the basis of a new fact or an argument that has not been debated between the parties or the interested persons.

20 Furthermore, as regards the criticisms made of the Advocate General's Opinion, it must be borne in mind, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court make no provision for interested parties to submit observations in response to the Advocate General's Opinion (judgments of 25 October 2017, *Polbud — Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph 23 and the case-law cited, and of [25 July 2018, *Mitsubishi Shoji Kaisha and Mitsubishi Caterpillar Forklift Europe*, C-129/17, EU:C:2018:594](#), paragraph 25).

21 Second, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. In this regard, the Court is not bound either by the Opinion delivered by the Advocate General or by the reasoning which led to that Opinion. As a consequence, the fact that a party disagrees with the Advocate General's Opinion, irrespective of the questions examined in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgments of 25 October 2017, *Polbud — Wykonawstwo*, C-106/16, EU:C:2017:804, paragraph

24, and of [25 July 2018, Mitsubishi Shoji Kaisha and Mitsubishi Caterpillar Forklift Europe, C-129/17, EU:C:2018:594](#), paragraph 26).

22 In the light of the foregoing, the Court, after hearing the Advocate General, considers that there is no need to order the reopening of the oral part of the procedure.

Consideration of the question referred

23 By its question, the referring court asks, in essence, whether Article 1 of Regulation No 583/2009 must be interpreted as meaning that the protection of the name '*Aceto Balsamico di Modena*' extends to the use of the individual non-geographical terms of that name.

24 In accordance with Article 1 of Regulation No 583/2009, read in conjunction with recital 11 of and Annex I to that regulation, the name '*Aceto Balsamico di Modena (PGI)*' is registered and entered in the register of protected designations of origin and protected geographical indications. Therefore, according to the wording of that Article 1, it is the name '*Aceto Balsamico di Modena*' as a whole that is registered and, consequently, protected.

25 In that regard, the Court has already held that, under the system of protection created by Regulation No 2081/92, which was reproduced in Regulation No 510/2006 and is now provided for in Regulation No 1151/2012, questions concerning the protection to be accorded to the various constituent parts of a registered name are matters which fall for determination by the national court on the basis of a detailed analysis of the facts presented before it by the parties concerned (see, to that effect, judgments of [9 June 1998, Chiciak and Fol, C-129/97 and C-130/97, EU:C:1998:274](#), paragraph 38, and of [26 February 2008, Commission v Germany, C-132/05, EU:C:2008:117](#), paragraph 30).

26 However, the Court has also held that, as regards a 'compound' name registered in accordance with Regulation No 2081/92, the fact that, for that name, there is no footnote, in the regulation registering that name, specifying that registration is not sought for one of the parts of that name does not necessarily mean that each of its parts is protected. The Court pointed out that, even if it may prove to be the case that it follows from Article 13 of Regulation No 2081/92 that, in the absence of specific circumstances pointing to the contrary, the protection afforded by that provision covers not only the compound name as a whole, but also each of its constituent parts, that will be the case only if that constituent part is not a generic or a common term (see, to that effect, judgment of [9 June 1998, Chiciak and Fol, C-129/97 and C-130/97, EU:C:1998:274](#), paragraphs 37 and 39).

27 Given that the system for the protection of geographical indications and designations of origin for agricultural products and foodstuffs contained in Regulation No 2081/92 was, as regards the protection of those names, reproduced, without any substantive changes, in Regulation No 510/2006 and subsequently in Regulation No 1151/2012 and the provisions of Article 13 of that first regulation were reproduced, also without any substantive changes, in Article 13 of each of those subsequent regulations, it must be noted that that

case-law remains relevant and that it therefore also applies to compound names, such as the PGI at issue, registered pursuant to Regulation No 510/2006 and now protected by Regulation No 1151/2012.

28 It is apparent from the specific circumstances of the registration, by Regulation No 583/2009, of the name '*Aceto Balsamico di Modena*' that the protection conferred on that name cannot extend to the individual non-geographical terms of that name.

29 In that regard, it must be pointed out that the operative part of an act is indissociably linked to the statement of the reasons for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption (judgments of 27 June 2000, *Commission v Portugal*, C-404/97, EU:C:2000:345, paragraph 41 and the case-law cited, and of 29 April 2004, *Italy v Commission*, C-91/01, EU:C:2004:244, paragraph 49).

30 In the present case, it is apparent from recital 8 of Regulation No 583/2009 that it is the name '*Aceto Balsamico di Modena*' that has an undeniable reputation on the national and international market and that it is therefore that compound name as a whole which meets the inherent condition for the product having a specific reputation linked to that name.

31 Moreover, as regards the objections to the registration of that name submitted by the Federal Republic of Germany and the Hellenic Republic, it is stated in recital 10 of that regulation that those Member States 'did not refer to the entire name, i.e. "*Aceto Balsamico di Modena*" ... but only to some elements of it, namely the words "*aceto*", "*balsamico*" and "*aceto balsamico*", or to translations thereof'; that '*however, protection is granted to the term "Aceto Balsamico di Modena" as a whole*' and that '*individual non-geographical components of that term may be used, even jointly and also in translation, throughout the [European Union], provided the principles and rules applicable in the [European Union]'s legal order are respected*'.

32 Consequently, in recital 11 of that regulation, it is stated that '*in the light of the above, the name "Aceto Balsamico di Modena" should be entered in the register of protected designations of origin and protected geographical indications*'.

33 It thus follows unequivocally from the recitals of Regulation No 583/2009 that the non-geographical terms of the PGI at issue, namely '*aceto*' and '*balsamico*', and their use in combination and in translation cannot benefit from the protection for the PGI '*Aceto Balsamico di Modena*' that was granted by Regulation No 510/2006 and is now ensured by Regulation No 1151/2012.

34 Moreover, first, it is established that the term '*aceto*' is a common term, as previously held by the Court (see, to that effect, judgment of 9 December 1981, *Commission v Italy*, 193/80, EU:C:1981:298, paragraphs 25 and 26). Second, the term '*balsamico*' is the Italian translation of the adjective '*balsamic*' which has no geographical connotation and which, in the case of vinegar, is commonly used to refer to a vinegar with a bitter-sweet flavour. It is therefore also a common term

within the meaning of the case-law referred to in paragraph 26 of this judgment.

35 Lastly, as the Advocate General has also pointed out, in essence, in points 57 and 58 of his Opinion, that interpretation of the scope of the protection conferred on the PGI at issue is appropriate in the light of the registrations of the PDOs '*Aceto balsamico tradizionale di Modena*' and '*Aceto balsamico tradizionale di Reggio Emilia*' which were, moreover, as stated in the recitals to Regulation No 583/2009, also taken into account by the Commission when that regulation was adopted. The use in the text of those PDOs of the terms '*aceto*' and '*balsamico*' and their use in combination and in translation cannot be considered likely to infringe the protection conferred on the PGI at issue.

36 In the light of all the foregoing considerations, the answer to the question referred is that Article 1 of Regulation No 583/2009 must be interpreted as meaning that the protection of the name '*Aceto Balsamico di Modena*' does not extend to the use of the individual non-geographical terms of that name.

Costs

37 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 (Fifth Chamber) hereby rules:

Article 1 of Commission Regulation (EC) No 583/2009 of 3 July 2009 entering a name in the register of protected designations of origin and protected geographical indications [*Aceto Balsamico di Modena* (PGI)] must be interpreted as meaning that the protection of the name '*Aceto Balsamico di Modena*' does not extend to the use of the individual non-geographical terms of that name.

[Signatures]

* Language of the case: German.

OPINION OF ADVOCATE GENERAL HOGAN

delivered on 29 July 2019(1)

Case C-432/18

Consorzio Tutela Aceto Balsamico di Modena

v

BALEMA GmbH

(Request for a preliminary ruling from the Bundesgerichtshof (Federal Court of Justice, Germany))

(Reference for a preliminary ruling — Agriculture — Council Regulation (EC) No 510/2006 — Regulation (EC) No 1151/2012 — Protection of geographical indications and designations of origins — Article 13(1) — Commission Regulation (EC) No 583/2009 — Registration of the name '*Aceto Balsamico di Modena* (PGI)' — Protection of components of that indication)

I. Introduction

1. Balsam is an aromatic and oily substance which flows as a sap from various plants. It has for millennia been used as a base for medicines, ointments and fragrances. The use of balsam for these purposes is well established

in European tradition and culture. There are several references to the use of balsam (or balm) for healing purposes in both the Bible and the plays of Shakespeare alike and, of course, in Wagner's final opera, Parsifal, we learn that the suffering and intense pain of the stricken king Amfortas can only be eased by the administration to his otherwise incurable wound of a phial of balsam obtained from Arabia.

2. It is thus that the word '*balsam*' (and cognate words such as '*balm*') has historically entered our contemporary understanding. Nowadays, of course, the word '*balsam*' is often associated with the very well-known product, '*Aceto Balsamico di Modena*'. This is a very dark, concentrated and flavoured vinegar which is made from seasoned (and partially fermented) grapes which age for several years in a series of wooden barrels. (2) As it happens, the product itself does not contain balsam, but the Italian word '*balsamico*' means '*balsam-like*'. The use of the adjective '*balsamico*' to describe the vinegar ('*aceto*') is thus used in the sense of highlighting the curative or healing and generally balsam-like qualities which the product was originally thought to possess.

3. All of this raises the issue of whether the word '*balsamico*' is entitled to protection as a geographical indication in its own right. This is the essential question which arises in the present request for a preliminary ruling, which was lodged by the Bundesgerichtshof (Federal Court of Justice, Germany) at the Registry of the Court on 2 July 2018 and which concerns the interpretation of Article 1 of and Annex I to Regulation No 583/2009. It was this particular regulation which entered the name '*Aceto Balsamico di Modena* (PGI)' in the register of protected designations of origin and protected geographical indications.

4. By its question, the referring court seeks to ascertain whether the protection afforded by the registration of the entire name '*Aceto Balsamico di Modena* (PGI)' extends also to the use of individual non-geographical components (3) of that name, namely the terms '*Aceto*', '*Balsamico*' and '*Aceto Balsamico*'. Before examining these questions, it is necessary first to set out the relevant legal provisions.

II. Legal context

5. Regulation No 583/2009 was adopted on the basis 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. (4) Regulation No 510/2006 was repealed from 3 January 2013 by Article 58(1) of Regulation (EU) No 1151/2012. (5) In accordance with Article 58(2) of Regulation No 1151/2012, references inter alia to the repealed Regulation No 510/2006 shall be construed as references to Regulation No 1151/2012. (6)

A. Regulation No 1151/2012

6. Article 3(6) of Regulation No 1151/2012 states that '*generic terms*' '*means the names of products which, although relating to the place, region or country where the product was originally produced or marketed, have become the common name of a product in the Union*'.

7. Article 5(2) of Regulation No 1151/2012 provides that:

'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 6(1) of Regulation No 1151/2012 states:

'Generic terms shall not be registered as protected designations of origin or protected geographical indications.'

9. Article 13 of Regulation No 1151/2012 entitled 'Protection' states:

'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.*

Where a protected designation of origin or a protected geographical indication contains within it the name of a product which is considered to be generic, the use of that generic name shall not be considered to be contrary to points (a) or (b) of the first subparagraph.

2. Protected designations of origin and protected geographical indications shall not become generic.

...

10. Article 41 of Regulation No 1151/2012 entitled 'Generic terms' provides:

'1. Without prejudice to Article 13, this Regulation shall not affect the use of terms that are generic in the Union, even if the generic term is part of a name that is protected under a quality scheme.

2. To establish whether or not a term has become generic, account shall be taken of all relevant factors, in particular:

- (a) the existing situation in areas of consumption;*
- (b) the relevant national or Union legal acts.*

3. In order to fully protect the rights of interested parties, the Commission shall be empowered to adopt delegated acts, in accordance with Article 56, laying down

additional rules for determining the generic status of terms referred to in paragraph 1 of this Article.'

B. Regulation No 583/2009

11. Recitals 2 to 5, 7, 8 and 10 of Regulation No 583/2009 provide:

'(2) Germany, Greece and France submitted objections to the registration ...

(3) Germany's objection referred in particular to the concern that the registration of "Aceto Balsamico di Modena" as a protected geographical indication would adversely affect other products that have been placed lawfully on the market for at least 5 years and sold as Balsamessig/Aceto balsamico, as well as to the alleged generic character of these terms. ...

(4) France's objection concerned the fact that "Aceto Balsamico di Modena" does not have its own reputation that is distinct from that of "Aceto balsamico tradizionale di Modena", which has already been registered as a protected designation of origin under Council Regulation (EC) No 813/2000. France claims that consumers could be misled as to the nature and origin of the product in question.

(5) Greece stressed the importance of balsamic vinegar production in Greece, which is marketed under names such as "balsamico" or "balsamon" and the negative impact that registration of the name "Aceto Balsamico di Modena" would have on these products, which have been placed lawfully on the market for at least 5 years. Greece also maintains that the terms "aceto balsamico", "balsamic", etc. are generic.

...

(7) Given that no agreement was reached between France, Germany, Greece and Italy within the designated timeframe, the Commission must adopt a decision in accordance with the procedure outlined in Article 15(2) of Regulation (EC) No 510/2006.

(8) The Commission has requested the opinion of the scientific committee for designations of origin, geographical indications and certificates of specific character established under Decision 93/53/EC as to whether the conditions for registration were met. The committee stated in its unanimous opinion submitted on 6 March 2006 that the name "Aceto Balsamico di Modena" has an undeniable reputation on the national and international market, as demonstrated by its frequent use in numerous recipes in many Member States, and the many references to it on the internet, in the press and other media. "Aceto Balsamico di Modena" therefore meets the inherent condition for the product having a specific reputation linked to that name. The committee noted the fact that these products have co-existed on the market for hundreds of years. It also noted that "Aceto Balsamico di Modena" and "Aceto balsamico tradizionale di Modena" are different as regards their characteristics, customer base, usage, method of distribution, presentation and price, thereby ensuring the fair treatment of the producers in question and not misleading consumers. The Commission fully concurs with these points.

...

(10) It appears that Germany and Greece did not refer to the entire name, i.e. “Aceto Balsamico di Modena” in their objections regarding the generic nature of the name proposed for registration, but only to some elements of it, namely the words “aceto”, “balsamico” and “aceto balsamico”, or to translations thereof. However, protection is granted to the term “Aceto Balsamico di Modena” as a whole. Individual non-geographical components of that term may be used, even jointly and also in translation, throughout the Community, provided the principles and rules applicable in the Community’s legal order are respected.’

12. Article 1 of Regulation No 583/2009 provides: ‘The name contained in Annex I to this Regulation shall be entered in the register.’

13. Annex I of Regulation No 583/2009 refers to ‘Aceto Balsamico di Modena (PGI)’.

III. The dispute in the main proceedings and the question referred for a preliminary ruling

14. BALEMA GmbH (‘BALEMA’) produces vinegar-based products and markets them in the Baden region (Germany). For at least 25 years, it has been selling products under the designations ‘Balsamico’ and ‘Deutscher Balsamico’. The labels on its products bear the legend ‘Theo der Essigbrauer, Holzfassreifung, Deutscher Balsamico traditionell, naturtrüb aus badischen Weinen’ [Theo the vinegar brewer, matured in wooden barrels, German balsamic vinegar, traditional, naturally cloudy, made from Baden wine] or ‘1. Deutsches Essig-Brauhaus, Premium, 1868, Balsamico, Rezeptur No 3’ [first German vinegar brewery, premium, 1868, balsamic, recipe No 3].

15. It is agreed that BALEMA’s products designated as ‘Balsamico’ are not covered by the registration ‘Aceto Balsamico di Modena (PGI)’ pursuant to Article 1 of and Annex I to Regulation No 583/2009 because they do not fulfil the product specifications contained in Annex II of that regulation.

16. Consorzio Tutela Aceto Balsamico di Modena (‘the Consorzio’) is a consortium of producers of the products designated by the name ‘Aceto Balsamico di Modena’. It considers that BALEMA’s use of the designation ‘Balsamico’ infringes the protected geographical indication ‘Aceto Balsamico di Modena’. The Consorzio thus served a warning notice on BALEMA. BALEMA in turn brought an action in the German courts against the Consorzio seeking a negative declaration to the effect that there had been no trade mark infringement. That action was unsuccessful.

17. In the appeal on the merits, BALEMA sought a declaration that it is not obliged to refrain from using the designation ‘Balsamico’ for vinegar-based products produced in Germany. The appeal on the merits was upheld as the court considered that the use of the name ‘Balsamico’ in respect of vinegar did not infringe Article 13(1)(b) of Regulation No 1151/2012. According to that court, the protection for the name ‘Aceto Balsamico di Modena’ granted by Regulation No 583/2009 was conferred only on the entire name and not on the non-

geographical components of the term as a whole, even if used jointly.

18. The case was appealed to the referring court.

19. The referring court considers that the appeal on a point of law will succeed if the names ‘Balsamico’ and ‘Deutscher Balsamico’ used by BALEMA infringe Article 13(1)(a) or (b) of Regulation No 1151/2012. According to that court such a finding would require that the protection of the entire name ‘Aceto Balsamico di Modena’ granted by Article 1 of Regulation No 583/2009 also covers the use of the individual non-geographical components of the term as a whole (‘Aceto’, ‘Balsamico’, ‘Aceto Balsamico’).

20. The Bundesgerichtshof (Federal Court of Justice) notes that it is clear from the second subparagraph of Article 13(1) of Regulation No 1151/2012 and the case-law of the Court that, pursuant to Article 13(1)(a) or (b) of that regulation, a protected geographical indication that consists of several terms can be protected against not only the use of the entire indication, but also against the use of individual terms of that indication. The second subparagraph of Article 13(1) of Regulation No 1151/2012 governs the specific case in which a protected geographical indication contains within it the name of a product which is considered to be generic. That provision stipulates that the use of that generic name is not to be considered to be contrary to Article 13(1)(a) or (b) of that regulation. The Bundesgerichtshof (Federal Court of Justice) also refers to the fact that the Commission regulation registering the name may restrict the scope of the protection of a protected geographical indication that consists of several terms so that it does not cover the use of individual terms of that indication. In that regard, the fact that an applicant may state that it does not seek protection for all elements of a name shows that the protection granted by its registration can be restricted.

21. The Bundesgerichtshof (Federal Court of Justice) considers that recitals 3, 5 and 10 of Regulation No 583/2009 militate in favour of a restriction of the scope of protection to the name ‘Aceto Balsamico di Modena’ as a whole, to the exclusion of individual non-geographical components. It also considers that, contrary to the view taken in the appeal on a point of law, the assumption that protection is granted to the name ‘Aceto Balsamico di Modena’ as a whole did not give rise to an inconsistency with the registration of the protected designations of origin ‘Aceto balsamico tradizionale di Modena’ and ‘Aceto balsamico tradizionale di Reggio Emilia’ pursuant to Council Regulation (EC) No 813/2000 of 17 April 2000 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92. (7) Contrary to Regulation No 583/2009, the references to a restricted scope of protection in Regulation No 813/2000, which may be attributable to the fact that there was no opposition by Member States pursuant to Article 7 of Council Regulation (EEC) No 2081/92 (8) (now Articles 51 and 52 of Regulation No

1151/2012) in the preceding registration procedure, does not preclude a restriction of the protective effect of the name ‘Aceto Balsamico di Modena’ as a whole.

22. In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Does the protection of the entire name “Aceto Balsamico di Modena” extend to the use of the individual non-geographical components of the term as a whole (“Aceto”, “Balsamico”, “Aceto Balsamico”)?’

IV. Procedure before the Court

23. Written observations were submitted by the Consorzio, the Italian, Greek, and Spanish Governments and the Commission. The Consorzio, BALEMA, the German, Greek, Spanish and Italian Governments and the Commission presented oral argument at the hearing on 23 May 2019.

V. Analysis

A. Preliminary remarks

24. It may be observed at the outset that part of the difficulty in this — and, indeed, other similar — cases stems from the somewhat promiscuous use of the single expression ‘generic terms’ in two different senses. As I have just noted, the expression ‘generic terms’ is defined by Article 3(6) of Regulation No 1151/2012 as meaning the names of products ‘which, although relating to the place, region or country where the product was originally produced or marketed, have become the common name of a product in the Union’. But the expression has also been used by courts, judges, lawyers and commentators alike to refer simply to common or usual words which, precisely because of their generic quality, do not qualify for registration as PGIs/PDOs. (9) As it is necessary to keep these concepts separate, I propose to use the expression ‘generic terms’ in the special sense by which it was defined in Article 3(6) of Regulation No 1151/2012, but otherwise simply to use the term ‘common words’ to describe words or phrases which in other contexts could — or, perhaps, even would — be described as generic in character.

25. Article 13(1)(a) to (d) of Regulation No 1151/2012 sets out a graduated list of prohibited conduct in relation to names registered under that regulation. (10) Points (a) to (d) of Article 13(1) of Regulation No 1151/2012 refer to various situations in which the marketing of a product is accompanied by an explicit or implicit reference to a geographic indication or denomination in circumstances liable to mislead the public as to the origin of the product or, at the very least, to set in train in the mind of the public an association of ideas regarding that origin, or to enable the trader to take unfair advantage of the reputation of the geographical indication or denomination concerned. (11)

26. In the judgment of 7 June 2018, Scotch Whisky Association (C-44/17, EU:C:2018:415, paragraph 29), the Court held that the word ‘use’ in Article 16(a) of Regulation No 110/2008 in relation to ‘any direct or indirect commercial use in respect of products not covered by the registration’ (12) ‘requires, by definition, that the sign at issue make use of the protected

geographical indication itself, in the form in which that indication was registered or, at least, in a form with such close links to it, in visual and/or phonetic terms, that the sign at issue clearly cannot be dissociated from it’. At paragraph 44 of that judgment, the Court stated that the notion of ‘evocation’ (13) ‘covers a situation in which the term used to designate a product incorporates part of a protected geographical indication, so that when the consumer is confronted with the name of the product in question, the image triggered in his mind is that of the product whose indication is protected’. (14)

27. Article 13(1), second subparagraph, of Regulation No 1151/2012 provides, however, that, when a name (15) registered in the register of protected designations of origin (‘PDO’) and protected geographical indications (‘PGI’), contains a generic element, the use of that generic element does not infringe the protection of the aforementioned registered name pursuant to Article 13(1)(a) and (b) of that regulation. It is thus clear from the very wording of Article 13(1), second subparagraph, of Regulation No 1151/2012 itself that a compound name registered in the register of PDOs and PGIs may itself contain generic or otherwise unprotected elements.

28. Thus, where a PDO or a PGI is made up of several elements/names, one or more of which is the name of a product which is considered generic, the use by a third party of the generic element/name does not, in principle, infringe the protection granted by Article 13(1)(a) and (b) (16) of Regulation No 1151/2012 (17) against any direct or indirect commercial use of a registered name and any misuse, imitation or evocation of a registered name respectively. (18) This point may be illustrated by a very straightforward example. Prosciutto di Parma (Parma ham) has been entered on the PDO register, (19) but it could not be suggested, for example, that the word ‘prosciutto’/‘ham’ cannot be used by other producers and suppliers.

29. This important principle was confirmed by the order of 6 October 2015, Schutzgemeinschaft Milch und Milcherzeugnisse v Commission (C-517/14 P, EU:C:2015:700), in which the Court stated that given that the Commission had determined, in Article 1 of Commission Regulation (EU) No 1121/2010 of 2 December 2010 entering a designation in the register of protected designations of origin and protected geographical indications [Edam Holland (PGI)] (20) relating to the registration of the name ‘Edam Holland’, that the name ‘Edam’ constitutes a generic designation, that word could — the registration of the PGI ‘Edam Holland’ notwithstanding — continue to be used within the territory of the European Union, provided that the principles and rules applicable in its legal order were respected. The Court thus found that the General Court had not erred in law in finding, inter alia, that Regulation No 1121/2010 provides that the name ‘Edam’ may continue to be used for the marketing of cheeses. (21)

30. Given the very broad scope of protection granted by Article 13(1)(a) and (b) of Regulation No 1151/2012, (22) so far as the present case is concerned, it is imperative to ascertain, prior to any determination of

infringement of those provisions, whether a compound name registered in the register of PDOs and PGIs contains generic — and thus unprotected — elements.

B. The concept of ‘generic terms’ pursuant to Regulation No 1151/2012 and the case-law of the Court

31. As I have already indicated, the definition of ‘generic terms’ contained in Article 3(6) of Regulation No 1151/2012 is, in my view, very specific and limited in scope. It *‘means the names of products which, although relating to the place, region or country where the product was originally produced or marketed, have become the common name of a product in the Union’*. (23) The definition thus refers to terms which over time have lost their geographical connotation. In its judgment of 2 July 2009, *Bavaria and Bavaria Italia* (C-343/07, EU:C:2009:415, paragraph 107), the Court stated that *‘as regards a PGI, a name becomes generic only if the direct link between, on the one hand, the geographical origin of the product and, on the other hand, a specific quality of that product, its reputation or another characteristic of the product, attributable to that origin, has disappeared, and that the name does no more than describe a style or type of product’*.

32. As I have already indicated, part of the difficulty in the present — and, indeed, similar — cases arises from the particular and limited manner in which the term ‘generic’ has been defined by Regulation No 1151/2012. It is nevertheless clear that, in addition to ‘generic terms’ in the strict sense of the definition contained in Article 3(6) of Regulation No 1151/2012, the use of common names or usual terms which have no current geographical connotation — and which are often also described as generic terms in a slightly different sense of that term — do not infringe the protection of a registered name provided under Article 13(1)(a) and (b) of Regulation No 1151/2012.

33. In that regard, it must be noted that at paragraph 80 of its judgment of 16 March 1999, *Denmark and Others v Commission* (C-289/96, C-293/96 and C-299/96, EU:C:1999:141), the Court considered that the terms *‘name that has become generic’* — contained in a provision equivalent to Article 41 of Regulation No 1151/2012 concerning the use of generic terms — is also applicable to names which have always been generic.

34. Moreover, in its judgment of 9 June 1998, *Chiciak and Fol* (C-129/97 and C-130/97, EU:C:1998:274, paragraph 37), the Court found that the protection afforded by a provision equivalent to Article 13(1) of Regulation No 1151/2012 covers not only the compound designation as a whole, but also each of its constituent parts, provided they are not generic or common terms. (24)

35. The German, Greek, and Spanish Governments and the Commission consider that ‘Aceto’, ‘Balsamico’ and ‘Aceto Balsamico’ are generic and/or common terms. For example, it was argued before this Court that the term ‘Balsamico’ is derived from the Latin word ‘balsamun’ or the Greek word ‘βάλσαμον’, (25) is used in Italian, Spanish and Portuguese and refers, inter alia, to a calming preparation used for medicinal purposes.

36. In assessing whether a term is generic in the special context of the definition contained in Article 3(6) of Regulation No 1151/2012, or whether it is a common term (and thus generic in the broader sense I have just described), what is decisive, in my view, is not necessarily whether a term has a particular meaning in a given language (26) but rather whether it lacks a current geographical connotation.

37. In that regard, it must be noted that despite the fact that the word ‘feta’ means ‘slice’ in Italian (27) and would thus at least prima facie appear to be a common term, the Court found in its judgment of 25 October 2005, *Germany and Denmark v Commission* (C-465/02 and C-466/02, EU:C:2005:636, paragraphs 88 and 94) that the name ‘feta’ as a PDO for cheese was not generic. (28) The Court found that the Commission was entitled to conclude that ‘feta’ was a designation of origin in respect of cheese produced in Greece. That decision must, however, be understood by reference to the specific and particular findings of fact made in that case.

38. In that case, the Federal Republic of Germany and the Kingdom of Denmark applied for annulment of 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’ (29) claiming that it was inter alia, generic, in the sense of Article 3(1) of Regulation No 2081/92 i.e., the predecessor of the present Article 3(6) and Article 41(2) of Regulation No 1151/2012. In assessing whether the term ‘feta’ was generic, the Court took into account the places of production of the product concerned both inside and outside the Member State which obtained the registration of the name at issue, the consumption of that product and how it is perceived by consumers inside and outside that Member State, the existence of national legislation specifically relating to that product, and the way in which the name has been used in Community law. (30)

39. As the Court observed at paragraphs 86 to 90 of its judgment:

‘86 The information provided to the Court indicates that the majority of consumers in Greece consider that the name “feta” carries a geographical and not a generic connotation. In Denmark, by contrast, the majority of consumers believe that the name is generic. The Court does not have any conclusive evidence regarding the other Member States.

87 The evidence adduced to the Court also shows that, in Member States other than Greece, feta is commonly marketed with labels referring to Greek cultural traditions and civilisation. It is legitimate to infer therefrom that consumers in those Member States perceive feta as a cheese associated with the Hellenic Republic, even if in reality it has been produced in another Member State.

88 Those various factors relating to the consumption of feta in the Member States tend to indicate that the name “feta” is not generic in nature.

89 As to the German Government’s argument referring to the second sentence of the 20th recital of the contested regulation, it follows from paragraph 87 of this

judgment that it is not incorrect to state, with respect to consumers in Member States other than the Hellenic Republic, that “the link between the name ‘feta’ and Greece is thus deliberately suggested and sought as part of a sales strategy that capitalises on the reputation of the original product, and this creates a real risk of consumer confusion”.

90 The argument put forward by the German Government maintaining the contrary is, therefore, unfounded.’ (31)

40. In effect, therefore, that case turned on the fact that, as found by the Court, for the vast majority of European consumers, the word ‘feta’ was indelibly associated with the particular cheese produced in Greece. Indeed, save for Italian speakers, the term had no other meaning for those consumers. It followed, accordingly, that the Commission was entitled to conclude that the word ‘feta’ was not a generic term for the purposes of Article 3(1) of Regulation No 2081/92 as it had a current geographical connotation.

41. If the matter were one of purely personal judgment, I think that I would find myself arriving at the opposite conclusion so far as the present case is concerned. ‘Aceto’ is obviously a common Italian word and while the word ‘balsamico’ is certainly closely associated in the minds of many consumers with the product produced by the Consorzio, the basic root word(s) ‘balsam’ and ‘balm’ are, in my view, just too common and well established words to accommodate themselves individually for protection as a PGI. Nor, in my view, can it be said that these words have a current geographical connotation so that, on this basis, these words represent ‘generic terms’ for the purposes of Article 3(6) of Regulation 1151/2012.

42. The test, nevertheless, is ultimately the manner in which these words would be perceived by the ‘average consumer who is reasonably well informed and reasonably observant and circumspect’. (32) This would be a matter ultimately for the national court to verify and assess, assisted perhaps by appropriate consumer surveys and the like. (33)

43. Absent such findings by the national court, in these circumstances, I believe that the Court is simply not in a position itself to make a judgement as to whether the words ‘aceto’ and ‘balsamico’ are common words in the sense I have described or whether the words are also ‘generic terms’ in the special sense of Article 3(6) of Regulation No 1151/2012. Despite this reservation, I nonetheless consider that this Court can give a definitive ruling on this matter if the matter is approached from the slightly different standpoint of an analysis of the provisions of Regulation No 583/2009. In this respect, I have found its recitals to be particularly instructive. It is to this issue to which I now propose to turn.

C. Interpretation of Regulation No 583/2009

44. In accordance with Article 1 of and Annex I to Regulation No 583/2009, the compound name ‘Aceto Balsamico di Modena (PGI)’ was entered in the register. No limitation or qualification in respect of the scope of protection of that compound name is contained in Article 1 of or Annex I to that regulation.

45. It is clear however from recitals 2, 3, 5 and 7 of Regulation No 583/2009 that Germany, Greece (34) and France submitted objections to the registration of the name ‘Aceto Balsamico di Modena’. It would appear in particular that Germany and Greece considered that the terms inter alia ‘Aceto balsamico’ were generic in character. (It is to be inferred from the context that the phrase ‘generic terms’ was used synonymously in the sense of common or usual word.)

46. Moreover, recital 10 of Regulation No 583/2009 states, inter alia, that ‘protection is granted to the term “Aceto Balsamico di Modena” as a whole. Individual non-geographical components of that term may be used, even jointly and also in translation, throughout the Community, provided the principles and rules applicable in the Community’s legal order are respected.’ (35)

47. Despite the contents of the recitals in question and the obvious controversy that surrounded the registration of the PGI ‘Aceto Balsamico di Modena’, it must be recalled that the Commission did not specifically determine in Article 1 of or Annex I to Regulation No 583/2009 whether any of the terms ‘Aceto’, ‘Balsamico’ or ‘Aceto Balsamico’ were generic designations (either in the special sense of the regulation or in the alternative and wider sense of that term by reason of the fact that they were simply common words) or non-geographical components, and could thus, notwithstanding the registration of the PGI at issue, continue to be used within the territory of the European Union in accordance with Article 13(1), second subparagraph, of Regulation No 1151/2012.

48. This approach contrasts with the situation which prevailed in relation for example to Regulation No 1121/2010 in which not only recital 8 of the regulation in question but also its operative part clearly indicated that the name ‘Edam’ was generic. (36)

49. It must however be noted that in its judgment of 9 June 1998, Chiciak and Fol (C-129/97 and C-130/97, EU:C:1998:274, paragraph 39), the Court held as regards the use of compound terms in a designation of origin, (37) that the fact that there was no footnote in the annex to the regulation registering the designation in question specifying that registration was not sought for one of the parts of that designation (38) did not necessarily mean that each of its parts was protected. (39) By contrast in its judgment of 26 February 2008, Commission v Germany (C-132/05, EU:C:2008:117, paragraph 31), the Court rejected the argument that a PDO enjoys protection only in the exact form in which it is registered. (40)

50. In summary, no conclusion can be drawn from the fact that Article 1 of and Annex I to Regulation No 583/2009 do not specifically indicate whether any of the terms ‘Aceto’, ‘Balsamico’ or ‘Aceto Balsamico’ are generic designations (whether in the special sense of Article 3(6) of the regulation or by reason of the fact that they are common words) or non-geographical components.

51. Given that it is unclear from the wording Article 1 of and Annex I to Regulation No 583/2009, interpreted in

the light of the above case-law, whether any of the terms '*Aceto*', '*Balsamico*' or '*Aceto Balsamico*' are generic designations (and, again, whether in the special sense of Article 3(6) of the regulation or by reason of the fact that they are common words) or non-geographical components, I consider that those provisions must be interpreted in the light of the recitals of that regulation. It is settled case-law that the operative part of a European Union act is indissociably linked to the statement of reasons for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption. (41)

52. In that regard, recitals 2 to 5, 7, 8 and 10 of Regulation No 583/2009 clearly and unequivocally indicate that the European legislature (in this instance, the Commission) considered, on the basis of express objections raised by Germany, Greece and France that the terms '*Aceto*', '*Aceto Balsamico*' and '*Balsamico*' were generic designations or non-geographical components and that protection was only to be afforded to the entire name '*Aceto Balsamico di Modena*' rather than individual non-geographical components thereof.

53. In recital 8 of Regulation No 583/2009, the reputation of '*Aceto Balsamico di Modena*' is stressed and in recital 10 it is indicated that despite the objections raised by Germany, Greece and France to the registration of the terms '*Aceto*', '*Aceto Balsamico*' and '*Balsamico*', no objection was raised in relation to the entire name '*Aceto Balsamico di Modena*'. As previously indicated, recital 10 states that '*protection is granted to the term "Aceto Balsamico di Modena" as a whole*' (42) and that individual non-geographical components of that term may, in principle, be used.

54. I consider, accordingly, that it is clear in particular from recital 10 of Regulation No 583/2009 that the European legislature considered that terms '*Aceto*', '*Aceto Balsamico*' and '*Balsamico*' are generic (in both senses of that term) or non-geographical components which are unprotected and which could continue to be used provided that the principles and rules applicable in the European Union's legal order are respected.

55. An interpretation of Regulation No 583/2009 which would limit the scope of protection afforded by it to the entire name '*Aceto Balsamico di Modena*' rather than extending protection to its individual non-geographical components is clearly supported by the judgments of the Court of 9 December 1981, *Commission v Italy* (193/80, EU:C:1981:298), and of 15 October 1985, *Commission v Italy* (281/83, EU:C:1985:407). In those cases, the Court noted that the term '*Aceto*' is the Italian word for vinegar and held that it is a generic term. As these were free movement of goods cases, the Court was obviously using the words '*generic term*' in the sense of saying that the word '*aceto*' was simply a common Italian word for vinegar.

56. Despite the absence of any indication in Article 1 of or Annex I to Regulation No 583/2009 specifically limiting the protection granted to the term '*Aceto*', that common term cannot, in the light of the above case-law, be protected by that regulation. (43)

57. Moreover, in my view, the registration of the name '*Aceto balsamico tradizionale di Modena (PDO)*' pursuant to Regulation No 813/2000, which is all but identical to the PGI '*Aceto Balsamico di Modena*', save for the additional word '*tradizionale*' (44) and the capitalisation of the '*b*' in '*balsamico*' clearly argues, in my view, in favour of a finding that only the indication '*Aceto Balsamico di Modena*' as a whole is protected and that the terms '*Aceto*', '*balsamico*' and '*Aceto balsamico*' are simply common words. Such an approach is unequivocally supported by recitals 8 and 9 of Regulation No 583/2009.

58. I also consider that the registration of the designation '*Aceto balsamico tradizionale di Reggio Emilia (PDO)*' pursuant to Regulation No 813/2000 also tends to indicate that the terms '*Aceto*', '*balsamico*' and '*Aceto balsamico*' are common words.

59. In contrast, given the obvious geographic connotation attached to the word '*Modena*', (45) I consider that the use of that term or the terms '*di Modena*' in relation to vinegar or indeed other condiments could evoke, pursuant to Article 13(1)(b) of Regulation No 1151/2012, not only '*Aceto balsamico di Modena*' but also '*Aceto balsamico tradizionale di Modena*'.

60. I therefore consider that the protection of the entire name '*Aceto Balsamico di Modena*' under Regulation No 583/2009 does not extend to the use of the individual common words or non-geographical components, namely, '*Aceto*', '*Balsamico*' and '*Aceto Balsamico*'. (46) Those individual common words or non-geographical components may be used provided that the principles and rules applicable in the European Union order are respected.

VI. Conclusion

61. In view of all the foregoing considerations, I consider that the Court should answer the question referred by the Bundesgerichtshof (Federal Court of Justice, Germany) as follows:

The protection of the entire name '*Aceto Balsamico di Modena*' under Commission Regulation (EC) No 583/2009 of 3 July 2009 does not extend to the use of the individual common words or non-geographical components, namely, '*Aceto*', '*Balsamico*' and '*Aceto Balsamico*'.

1 Original language: English.

2 See, Annex II of Commission Regulation (EC) No 583/2009 of 3 July 2009 entering a name in the register of protected designations of origin and protected geographical indications [*Aceto Balsamico di Modena (PGI)*], OJ 2009 L 175, p. 7.

3 No question is raised concerning the term '*Modena*'.

4 OJ 2006 L 93, p. 12.

5 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).

6 For the purposes of the present proceedings, the relevant provisions of Regulation No 510/2006 are essentially equivalent to those of Regulation No

Regulation No 1151/2012 covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected. I consider that, in principle, the use of a name of a product which is considered generic and which is part of a PDO or PGI may not on its own constitute an evocation pursuant to Article 13(1)(b) of Regulation No 1151/2012. It must be noted that the use of such a generic name together with other terms, images etc. may in certain circumstances however, in my view, constitute such an evocation. See by analogy, the judgment of 7 June 2018, Scotch Whisky Association (C-44/17, EU:C:2018:415, paragraph 46). I therefore agree with the Consorzio that the question, examined in isolation, of whether a term in a PDO or PGI is generic may not be sufficient to resolve a question of whether there is an infringement pursuant to Article 13(1)(b) of Regulation No 1151/2012. In that regard, the Italian Government has asked the Court to rule not only on the question of whether the PGI ‘Aceto Balsamico di Modena’ covers the use of individual non-geographic elements of that indication but also on the conditions in accordance with which it is permitted and not permitted to use the terms ‘Aceto Balsamico’ or ‘Balsamico’ for the marketing of vinegar based condiments. I consider that such a question is beyond the scope of the current proceedings before this Court as it requires a knowledge of facts and circumstances that have not even been alluded to in the current proceedings. Such issues may, however be relevant in the main proceedings before the referring court. I would note however that in its recent judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego) (C-614/17, EU:C:2019:344), the Court provides considerable insight into the legal rules applicable under Article 13(1)(b) of Regulation No 1151/2012.

19 Commission Implementing Regulation (EU) No 1208/2013 of 25 November 2013 approving minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Prosciutto di Parma (PDO)), OJ 2013 L 317, p. 8.

20 OJ 2010 L 317, p. 14. See also recital 8 of that regulation.

21 See also Commission Regulation (EU) No 1122/2010 of 2 December 2010 entering a designation in the register of protected designations of origin and protected geographical indications [*Gouda Holland* (PGI)], OJ 2010 L 317, p. 22, and order of 6 October 2015, *Schutzgemeinschaft Milch und Milcherzeugnisse v Commission* (Schutzgemeinschaft Milch und Milcherzeugnisse v Commission) (C-519/14 P, EU:C:2015:702). In that order, the Court stated that the Commission had determined, in Article 1 of Regulation No 1122/2010 relating to the registration of the name ‘*Gouda Holland*’ that since the name ‘*Gouda*’ constitutes a generic designation it could, notwithstanding the registration of the PGI ‘*Gouda Holland*’, continue to be used within the territory of the European Union, provided that the principles and rules applicable in its legal order were respected. The Court thus found that the General Court had not erred in law in finding inter alia that Regulation No 1122/2010 provides that the name ‘*Gouda*’ may continue to be used for the marketing of cheeses.

22 On the broad scope of protection afforded by Article 13(1)(b) of Regulation No 1151/2012, see the recent judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego) (C-614/17, EU:C:2019:344). On the broad scope of protection afforded by Article 13(1)(b) of Regulation No 1151/2012, see the recent judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego) (C-614/17, EU:C:2019:344).

vinegar’ is defined in Article 3 of Royal Decree 661/2012 of 13 April, establishing the rules on quality standards governing the production and marketing of vinegars (Real Decreto 661/2012, de 13 de abril, por el que se establece la norma de calidad para la elaboración y comercialización de los vinagres). Moreover, according to that government the Royal Decree in question was notified in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37). It therefore claims that for many years, products in conformity with the Royal Decree have been sold as balsamic vinegar which are not covered by the PGI ‘*Aceto Balsamico di Modena*’ or indeed the PDOs ‘*Aceto balsamico tradizionale di Modena*’ and ‘*Aceto balsamico tradizionale di Reggio Emilia*’.

35 Emphasis added.

36 The Italian Government has relied considerably on the fact that the operative part of Regulation No 583/2009 does not specifically indicate that the terms ‘*Aceto Balsamico*’ or ‘*Balsamico*’ are generic.

37 In that case, ‘*Époisses de Bourgogne*’ in respect of cheese.

38 Namely the term ‘*Époisses*’.

39 I therefore consider that the Italian Government’s reliance on the fact that the terms ‘*Edam*’ and ‘*Gouda*’ were explicitly deemed generic in the relevant regulations cannot in itself be decisive.

40 The Court, at paragraph 29 its judgment of 26 February 2008, *Commission v Germany* *Commission v Germany* *Commission v Germany* (C-132/05, EU:C:2008:117), citing its judgment of 9 June 1998, *Chiciak and FolChiciak and FolChiciak* and *Fol* (C-129/97 and C-130/97, EU:C:1998:274, paragraph 38), stated that the lack of a declaration that, for certain elements of a designation, the protection conferred by Article 13 was not requested, cannot constitute a sufficient basis for determining the scope of that protection.

41 Judgment of 29 April 2004, *Italy v Commission* *Italy v Commission* *Italy v Commission* (C-298/00 P, EU:C:2004:240, paragraph 97 and the case-law cited). Moreover, the Court has consistently held that, 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 (see, inter alia, judgments of 23 January 2018, *Piotrowski*, C367/16C367/16, EU:C:2018:27, paragraph 40, and of 7 February 2018, *American Express*, C304/16C304/16, EU:C:2018:66, paragraph 54). It is also true that, according to the case-law of the Court, the preamble to a European Union act has no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting them in a manner clearly contrary to their wording (judgment of 2 April 2009, *Tyson Parkethandel* *Tyson Parkethandel* (C-134/08, EU:C:2009:229, paragraph 16). In the

present case, however, given the lack of clarity on the matter displayed by Article 1 of and Annex I to Regulation No 583/2009, reliance on the recitals to that regulation far from resulting in any contra legem interpretation serves to elucidate the intent of the European Union legislature.

42 Emphasis added.

43 See Articles 3(6), 6(1), 13(1), second subparagraph, and 41 of Regulation No 1151/2012.

44 The Italian word for ‘*traditional*’.

45 Which brings to mind the Italian city of Modena.

46 At paragraph 70 of the order of 7 July 2011, *Acetificio Marcello de Nigris v Commission* *Acetificio Marcello de Nigris v Commission* *Acetificio Marcello de Nigris v Commission* *Acetificio Marcello de Nigris v Commission* *Acetificio Marcello de Nigris v Commission* (T-351/09, not published, EU:T:2011:339), the General Court stated that recital 10 of Regulation No 583/2009 ensures that protection is conferred on the composite name ‘*Aceto Balsamico di Modena*’ as a whole. Therefore the individual non-geographical terms of that composite name, even if used jointly, as well as their translation, may be used in all Member States. While this Court is not however bound by that finding by the General Court, I am in full agreement therewith.