



## PRESS RELEASE No 118/23

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Judgment of the General Court in Case T-34/22 | Cunsorziu di i Salamaghji Corsi – Consortium des Charcutiers Corses and Others v Commission

### **Applications for registration of names as PGIs: the Commission is not bound by the prior assessment of the national authorities**

*The Commission enjoys a margin of independent discretion to check whether such an application fulfils the conditions for eligibility for registration laid down by EU law*

In 2014, the names 'Jambon sec de Corse'/'Jambon sec de Corse – Prisuttu', 'Lonzo de Corse'/'Lonzo de Corse – Lonzu' and 'Coppa de Corse'/'Coppa de Corse – Coppa di Corsica' were registered as protected designations of origin (PDOs)<sup>1</sup>.

In 2015, the Cunsorziu di i Salamaghji Corsi – Consortium des Charcutiers Corses (the 'Consortium') applied with the French national authorities, pursuant to Regulation No 1151/2012,<sup>2</sup> to register the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' as protected geographical indications (PGIs).

In 2018, those authorities issued decrees approving the corresponding specifications with a view to forwarding them to the European Commission for approval.

The union holding the specifications of the PDOs 'Jambon sec de Corse – Prisuttu', 'Lonzo de Corse – Lonzu' and 'Coppa de Corse – Coppa di Corsica' applied for the annulment of those decrees before the Conseil d'État (Council of State, France). It argued that the term 'Île de Beauté' imitated or evoked the term 'Corsica' and therefore caused confusion with the names already registered as PDOs. The Conseil d'État (Council of State) rejected that application on the ground, inter alia, that the use of different terms and the difference in the protections conferred by a PDO, on the one hand, and by a PGI, on the other, were such as to dispel that likelihood of confusion.

By Implementing Decision 2021/1879,<sup>3</sup> the Commission nevertheless refused to register the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' as PGIs. The Commission considered inter alia that it was well known that the name 'Île de Beauté' was a customary periphrasis, which, in the eyes of the French consumer, unequivocally refers to Corsica. Therefore, the names applied for constituted a breach of the protection

<sup>1</sup> Respectively, by Commission Implementing Regulation (EU) No 581/2014 of 28 May 2014 entering a name in the register of protected designations of origin and protected geographical indications (Jambon sec de Corse/Jambon sec de Corse – Prisuttu (PDO)) (OJ 2014 L 160, p. 23), Commission Implementing Regulation (EU) No 580/2014 of 28 May 2014 entering a name in the register of protected designations of origin and protected geographical indications (Lonzo de Corse/Lonzo de Corse – Lonzu (PDO)) (OJ 2014 L 160, p. 21) and Commission Implementing Regulation (EU) No 582/2014 of 28 May 2014 entering a name in the register of protected designations of origin and protected geographical indications (Coppa de Corse/Coppa de Corse – Coppa di Corsica (PDO)) (OJ 2014 L 160, p. 25).

<sup>2</sup> 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).

<sup>3</sup> Commission Implementing Decision (EU) 2021/1879 of 26 October 2021 rejecting three applications for protection of a geographical indication in accordance with Article 52(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council 'Jambon sec de l'Île de Beauté' (PGI), 'Lonzo de l'Île de Beauté' (PGI), 'Coppa de l'Île de Beauté' (PGI) (OJ 2021 L 383, p. 1).

granted to the PDOs concerned by Article 13(1)(b) of Regulation No 1151/2012<sup>4</sup>. Consequently, they did not comply with the conditions for eligibility for registration, namely Article 7(1)(a) of Regulation No 1151/2012.<sup>5</sup>

### **The action brought by the Consortium and some of its members against that decision is dismissed by the General Court.**

Although both the Court of Justice and the General Court have already had occasion to rule on the extent of the Commission's review of applications for registration, this case leads the General Court to rule for the first time on the eligibility of a name to be registered, a fortiori after national authorities and courts have found that consumers who are reasonably well informed and reasonably observant and circumspect would not, when faced with the PGIs applied for, directly have in mind, as a reference image, the products benefiting from PDOs already registered. In addition, this is also the first time that the Court has ruled on whether the Commission may refuse to register a name on the basis of a combined reading of Article 7(1)(a) and Article 13(1)(b) of Regulation No 1151/2012.

### **Findings of the Court**

The General Court **rejects** the plea that the Commission exceeded its powers and infringed the principle of *res judicata*.

As regards the Commission's powers, the Court finds, first, that Article 7(1)(a) of Regulation No 1151/2012, read in conjunction with Article 13(1)(b) of that regulation, **may constitute a valid legal basis for refusing to register a name**. Admittedly, Article 7(1)(a) relates specifically to the 'product specification' of the name which is the subject of an application for protection. However, the issue of evocation referred to in Article 13 is related to eligibility for registration under that provision. The Commission must assess, under Article 50(1) of Regulation No 1151/2012, read in the light of recital 58 thereof, following a detailed examination, whether the specification which accompanies the application for registration contains the information required by that regulation and whether that information does not appear to be vitiated by manifest errors.

That specification, the preparation of which constitutes a necessary step in the registration procedure, must include, in particular, the name for which protection is sought as it 'is used in trade or in common language'. It follows that the Commission must check that that use does not infringe the protection against evocation provided for in Article 13(1)(b) of Regulation No 1151/2012. **To allow the registration of a PGI when it would be evocative of a PDO already registered would render ineffective the protection provided for in Article 13(1)(b)**, since once that name is registered as a PGI, the name previously registered as a PDO **will no longer enjoy the protection provided for in that provision** in respect of that PDO.

Accordingly, the Commission cannot be required to allow the registration of a name if it considers its use in trade to be unlawful.

Secondly, the Court **clarifies the extent** of the Commission's examination of the compliance of the names with the conditions set out in Regulation No 1151/2012.

In that regard, the Commission must <sup>6</sup> **scrutinise**, by appropriate means, the applications to ensure that there are no manifest errors and that Union law and the interests of stakeholders outside the Member State of application have been taken into account.

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<sup>4</sup> Article 13 of Regulation No 1151/2012, relating to 'protection', provides, in its paragraph 1(b), that 'registered names shall be protected against ... (b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar, including when those products are used as an ingredient ...'.

<sup>5</sup> Under Article 7(1)(a) of Regulation No 1151/2012, entitled 'Product specification': '1. A protected designation of origin or a protected geographical indication shall comply with a specification which shall include at least: (a) the name to be protected as a designation of origin or geographical indication, as it is used, whether in trade or in common language ...'.

<sup>6</sup> Under recital 58 and Article 50(1) of Regulation No 1151/2012.

Thirdly, the Commission **has a different margin of discretion** depending on whether it is the **first stage of the procedure for registering a name**, namely the stage during which the documents constituting the file relating to the application for registration which the national authorities may forward to the Commission are collected, or the **second stage of that procedure**, namely its own examination of the applications for registration.

While it is apparent from the case-law<sup>7</sup> that, as regards the **first** of those two stages, the Commission has only **'limited, if any', discretion**, it has a **margin of independent discretion, as regards its decision to register a name as a PDO or PGI**, in the light of the conditions of eligibility for registration laid down in Article 7(1)(a) of Regulation No 1151/2012, read in conjunction with Article 13(1)(b) of that regulation.

As to an alleged infringement of the principle of *res judicata*, the General Court further states that the decision of a national court which has become *res judicata*, establishing that there was no risk, for reasonably well-informed and reasonably observant and circumspect consumers, of evocation between the registered PDOs and the PGIs applied for, **cannot be relied on in order to call into question the Commission's independent assessment of those conditions of eligibility**.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>7</sup>Judgments of 29 January 2020, GAEC Jeanningros, [C-785/18](#), and of 23 April 2018, CRM v Commission, [T-43/15](#).