

II

(Non-legislative acts)

DECISIONS

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)

(Notified under number C(2021) 7535)

(Only the French text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ⁽¹⁾, and in particular Article 52(1) thereof,

Whereas:

- (1) In accordance with Article 50 of Regulation (EU) No 1151/2012, the Commission has examined the applications for registration of 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), submitted by the French authorities on 17 August 2018 (files PGI-FR-02426, PGI-FR-02428 and PGI-FR-02430).
- (2) Article 7(1)(a) of Regulation (EU) No 1151/2012 states that, in order to be registered, a name must have been used in trade or in common language.
- (3) By virtue of Article 13(1)(b) of that Regulation, registered names are protected against any misuse, imitation or evocation, even if the true origin of the products or services is indicated. The first subparagraph of paragraph 3 of that Article requires Member States to take the appropriate administrative and judicial steps to prevent or stop the unlawful use of protected designations of origin or protected geographical indications that are produced or marketed in their territory.
- (4) This means that a name which would contravene the protection granted by Regulation (EU) No 1151/2012 could not be used in trade and therefore could not be registered under that Regulation.
- (5) In this case, the applications are for registration of names that are potentially evocative of names that have already been registered for a similar product, making it impossible to meet the eligibility criteria for registration laid down in Article 7(1)(a) of Regulation (EU) No 1151/2012.
- (6) Specifically, on 28 May 2014, the names ‘Jambon sec de Corse’ / ‘Jambon sec de Corse — Prisuttu’, ‘Lonzo de Corse’ / ‘Lonzo de Corse — Lonzu’, ‘Coppa de Corse’ / ‘Coppa de Corse — Coppa di Corsica’ were registered as protected designations of origin (PDOs) by means of Regulations (EU) Nos 581/2014, 580/2014 and 582/2014, respectively.

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

- (7) Since then, by virtue of Article 13 of Regulation (EU) No 1151/2012, those names have enjoyed protection against, among other things, any direct or indirect use thereof in respect of products that do not conform to the relevant specification and any misuse, imitation or evocation thereof.
- (8) A transitional period expiring on 27 April 2017 was nevertheless granted by the above-mentioned regulations to a number of French undertakings based in Corsica and using those names but in respect of products with different characteristics from those laid down in the specification; that transitional period was intended to allow the producers in question to adapt to the requirements of the specification as endorsed at EU level or, failing that, to change the sales name used.
- (9) The names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté', which have been used in trade since 2015, relate to the same geographical area as the aforementioned PDOs, namely the island of Corsica. Furthermore, it is common knowledge that 'Île de Beauté' is a customary periphrasis which, in the eyes of the French consumer, unequivocally refers to Corsica. The term 'Île de Beauté' is widely used to refer to Corsica, particularly on tourism websites, including non-French ones, and a large bibliography confirms that the two terms are considered synonyms in the minds of consumers, meaning that 'Île de Beauté' evokes Corsica, and vice versa.
- (10) Since 18 June 2014, the use of the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' would therefore constitute a breach of the protection granted to the PDOs 'Jambon sec de Corse' / 'Jambon sec de Corse — Prisuttu', 'Lonzo de Corse' / 'Lonzo de Corse — Lonzu', 'Coppa de Corse' / 'Coppa de Corse — Coppa di Corsica' under Article 13(1)(b) of Regulation (EU) No 1151/2012.
- (11) The applications for registration of 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' as PGIs were submitted to the Commission on 17 August 2018, i.e. at a time when those names could not have been legally used.
- (12) The Commission sent two letters to the French authorities requesting clarification. The letters primarily related to the ineligibility of the names in question for registration as PGIs.
- (13) The French authorities replied that they considered the two groups of products (i.e. the registered PDOs and the candidate PGIs) to be clearly different in terms of raw materials (breed and carcass weight), description, specifications, production volumes and sales price.
- (14) In their view, the names are sufficiently different. They are pronounced totally differently. They are not homonyms. They relate to different logos (PDO and PGI). There are comparable cases of similar names relating to the same geographical area: the registered wine names 'Île de Beauté' (PDO) and 'Corse' (PGI), which are synonyms and relate to the same geographical area, and the registered agricultural names 'Aceto balsamico tradizionale di Modena' (PDO) and 'Aceto Balsamico di Modena' (PGI), which are almost entirely homonymous.
- (15) In view of the differences between the products and their names, and given the precedents referred to above, the French authorities are of the opinion that consumers would be fully aware of the difference in quality between the product whose name is registered as a PDO and the product sold under the name 'Île de Beauté', just as they are capable of differentiating between a PDO 'Corse' or 'Vin de Corse' wine and a PGI 'Île de Beauté' wine or a PDO 'Aceto balsamico tradizionale di Modena' vinegar and a PGI 'Aceto Balsamico di Modena' vinegar.
- (16) The three names containing the term 'Île de Beauté' and the three corresponding registered names containing the term 'Corse' in relation to the same geographical area would therefore be 'sufficiently distinctive'.
- (17) The Commission infers from this that the French authorities consider the use of the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' in trade and in common language after registration of the PDOs 'Jambon sec de Corse' / 'Jambon sec de Corse — Prisuttu', 'Lonzo de Corse' / 'Lonzo de Corse — Lonzu', 'Coppa de Corse' / 'Coppa de Corse — Coppa di Corsica' not to constitute evocation of the aforementioned registered PDOs.

- (18) The Commission notes that the French authorities have not submitted any studies or surveys or provided any other specific evidence to support the view that the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté', used in trade or in common language after 18 June 2014, do not constitute evocation of the PDOs 'Jambon sec de Corse' / 'Jambon sec de Corse — Prisuttu', 'Lonzo de Corse' / 'Lonzo de Corse — Lonzu', 'Coppa de Corse' / 'Coppa de Corse — Coppa di Corsica'. The conclusions cited with regard to consumer perceptions do not therefore appear to be justified.
- (19) Specifically as regards the differences in quality between the products in respect of which registration is being sought and those already benefitting from protection, it should be noted, firstly, that those differences – which are nowhere indicated on the labelling – are *a priori* known only to a particularly well-informed public and, secondly, that, in terms of objective quality, the differences all entail a lower quality and a much more tenuous link with the area on the part of the product for which registration of the name is now being sought.
- (20) As regards the evocation potential of the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté', it should be noted that, even though the pronunciation is certainly different, the synonymy is obvious, as stated above. Thus, evocation cannot in any way be ruled out, as can be seen from the case-law involving Glen/Scotch Whisky^(?), which highlights the fact that phonetic similarity is not a prerequisite for evocation. In this case, the conceptual proximity of the terms 'Corse' and 'Île de Beauté' is recognised.
- (21) Stating that the type of geographical indication is different (PDOs as opposed to PGIs) as an argument to show the difference between the products and names ('de Corse' as opposed to 'de l'Île de Beauté') is specious. When assessing whether there is evocation, the factors to be taken into account are the registered names and the names used on the market, before their registration as PGIs (if any). Consumers cannot distinguish between the two names on the basis that they relate to two different types of geographical indication (PDO and PGI), since the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' are not currently PGIs and therefore do not involve a different quality logo.
- (22) The coexistence of the wine PDO 'Corse / Vin de Corse' and the PGI 'Île de Beauté' is not applicable to this case: that situation reflects a previous, fundamentally different and now obsolete procedure in which the Commission was notified of the national designations endorsed by the Member States without being able to object to them or even to have the right of scrutiny, which would, in any case, have been very limited if not illusory without notification of the specification.
- (23) The coexistence of the PDO 'Aceto balsamico tradizionale di Modena' and the PGI 'Aceto Balsamico di Modena' would, at first glance, seem to confirm that it is possible for two geographical indications (PDO and PGI) to coexist for products of the same category with the same general terms (balsamic vinegar) and the same geographical term (Modena). However, it should be stressed that these two applications for registration were submitted concomitantly by Italy in 1994 in order to gain recognition of the parallel and concurrent legitimacy of two specific geographical indications and not, as in this case, as an attempt to retrospectively rehabilitate the use of a name unjustifiably invented by operators deprived of the possibility of using the PDO at the end of the grace period granted to them, first by the French legislator and then by the European legislator.
- (24) In the light of the above, and in so far as the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté', in respect of which registration is being sought, have been used in trade or in common language in contravention of Article 13 of Regulation (EU) No 1151/2012, the applications for their registration as PGIs do not meet the eligibility criteria for registration, namely Article 7(1)(a) of Regulation (EU) No 1151/2012.
- (25) The applications for registration of the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' should be rejected.

(?) Judgment of the Court of Justice of 7.6.2018 in Case C-44/17.

- (26) The measures provided for in this Decision are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS DECISION:

Article 1

The applications for registration of the names 'Jambon sec de l'Île de Beauté', 'Lonzo de l'Île de Beauté' and 'Coppa de l'Île de Beauté' are rejected.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 26 October 2021.

For the Commission
Janusz WOJCIECHOWSKI
Member of the Commission
