



Reports of Cases

ORDER OF THE GENERAL COURT (Sixth Chamber)

3 September 2014*

(Action for annulment — Registration of a protected geographical indication — ‘Edam Holland’ —
No legal interest in bringing proceedings — No direct concern — Inadmissibility)

In Case T-112/11,

Schutzgemeinschaft Milch und Milcherzeugnisse eV, established in Berlin (Germany), represented
by M. Loschelder and V. Schoene, lawyers,

applicant,

v

European Commission, represented initially by G. von Rintelen and M. Vollkommer, and
subsequently by G. von Rintelen and F. Jimeno Fernández, acting as Agents,

defendant,

supported by

Kingdom of the Netherlands, represented by C. Wissels, J. Langer, M. Noort, B. Koopman and
M. Bulterman, acting as Agents,

and by

Nederlandse Zuivelorganisatie, established in Zoetermeer (Netherlands), represented by P. van
Ginneken, F. Gerritzen and C. van Veen, lawyers,

interveners,

APPLICATION for annulment 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)) (OJ 2010 L 317, p. 14),

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen, President, F. Dehousse (Rapporteur) and A.M. Collins, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: German.

Order

Background to the dispute

- 1 The Commission of the European Communities, on 1 March 2008, published an application for registration within the meaning of Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (summarised in OJ 2006 C 57, p. 39). That registration application, made by the Nederlandse Zuivelorganisatie ('the NZO') and submitted to the Commission by the Kingdom of the Netherlands, related to the registration of the protected geographical indication ('PGI') 'Edam Holland'.
- 2 On 26 June 2008, the applicant, Schutzgemeinschaft Milch und Milcherzeugnisse eV, lodged a statement of objection to the registration of the PGI at issue with the German authorities, under Article 7(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12).
- 3 In that statement of objection the applicant was described as a trade association of manufacturers and distributors of Edam, whose members had marketed 141 385 tonnes of Edam (94 361 tonnes from their own production) in 2007. In support of the statement of objection, it was stated inter alia that registration of the name 'Edam Holland', without any express clarification, would compromise the use of the generic name 'Edam'.
- 4 On 18 July 2008, the Federal Republic of Germany lodged with the Commission a statement of objection to the registration of the PGI at issue. The applicant's statement of objection of 26 June 2008 (paragraph 2 above) was annexed to the statement of objection lodged by the Federal Republic of Germany.
- 5 On 21 October 2008 the Commission informed the Kingdom of the Netherlands that it considered that the objection lodged by the Federal Republic of Germany was admissible. It also invited the Kingdom of the Netherlands and the Federal Republic of Germany to engage in appropriate consultations in order to reach an agreement within the meaning of Article 7(5) of Regulation No 510/2006.
- 6 On 29 May 2009 the Kingdom of the Netherlands informed the Commission that it had been unable to reach an agreement with the Federal Republic of Germany.
- 7 On 2 December 2010 the Commission adopted Regulation (EU) No 1121/2010 entering a designation in the register of protected designations of origin and protected geographical indications (Edam Holland (PGI)) (OJ 2010 L 317, p. 14, 'the contested regulation'). The specification for the PGI at issue provides, inter alia, that 'Edam Holland' cheese is produced in the Netherlands from cows' milk obtained from Dutch dairy farms (point 4.2 of the specification).

Procedure and forms of order sought

- 8 By application lodged at the Registry of the General Court on 23 February 2011 the applicant brought the present action.
- 9 By decision of 19 April 2011 the case was allocated to the First Chamber of that Court.
- 10 By orders of the President of the First Chamber of the General Court of 8 November 2011 the Kingdom of the Netherlands and the NZO were given leave to intervene in support of the Commission.

- 11 By decision of 31 January 2013 the case was allocated to a new Judge-Rapporteur.
- 12 When the composition of the chambers of the Court was altered, the Judge-Rapporteur was assigned to the Sixth Chamber, to which this case was, consequently, allocated.
- 13 On 15 November 2013, by way of measures of organisation of procedure, the Court requested the parties to reply to a number of questions. In particular, the parties were questioned about the condition for the admissibility of the action which related to the applicant's interest in bringing proceedings. The parties complied with that request within the prescribed period.
- 14 The applicant claims that the Court should:
- annul the contested regulation;
 - order the Commission to pay the costs.
- 15 The Commission, the Kingdom of the Netherlands and the NZO contend that the Court should:
- dismiss the action;
 - order the applicant to pay the costs.

Law

- 16 Under Article 113 of the Rules of Procedure of the General Court, the Court may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with a case. The decision is to be given in accordance with Article 114(3) and (4) of those rules.
- 17 In the present case, the Court considers that it has sufficient information from the documents before it and decides to give its decision without taking further steps in the proceedings.
- 18 As a preliminary point, it should be noted that since the applicant is an association it cannot in principle bring an action for annulment unless it can claim certain special circumstances, *inter alia* of a procedural nature, or unless the members which it represents or some of those members are in a position to bring an admissible action (see, to that effect, Case T-380/94 *AIUFFASS and AKT v Commission* [1996] ECR II-2169, paragraph 50; order of 29 April 1999 in Case T-78/98 *Unione provinciale degli agricoltori di Firenze and Others v Commission* [1999] ECR II-1377, paragraph 36; and order of 14 February 2012 in Case T-366/08 *Federcoopesca and Others v Commission*, not published in the ECR, paragraph 34).
- 19 The Commission, the Kingdom of the Netherlands and the NZO contend that the action is inadmissible since the applicant and its members lack any interest or standing to bring proceedings.
- 20 The applicant submits that the action is admissible. First, it states that, since there is no clear provision in that respect in the contested regulation, the protection conferred on the PGI at issue relates to both the constituent elements of the protected designation, which includes the word 'Edam'. The commercial activities of the applicant's members are therefore compromised. Secondly, the contested regulation creates the risk that some packaging bearing the word 'Edam', used with illustrations referring to the Kingdom of the Netherlands, might be regarded as being in breach of Regulation No 510/2006. Thirdly, the applicant points out that undertakings operating in the dairy sector can no longer sell milk produced in Germany for the manufacture of Edam Holland. That constitutes an obstacle to the economic activities of the applicant's members. Fourthly, the applicant claims it has an individual interest deriving from the fact that the Commission dismissed its objection in the present

case. Fifthly, in its response to the measures of organisation of procedure, the applicant contends that it has an interest in bringing proceedings in so far as the contested regulation exposes its members to the risk of being prosecuted for using the word 'Edam', and also that producers which are entitled to use the quality label for the PGI at issue have a competitive advantage over its own members.

- 21 According to settled case-law, an action for annulment is not admissible unless the natural or legal person who brings it has an interest in seeing the contested measure annulled. That interest must be vested and present and is assessed as at the date on which the action is brought (Case T-141/03 *Sniace v Commission* [2005] ECR II-1197, paragraph 25, and Case T-136/05 *Salvat père & fils and Others v Commission* [2007] ECR II-4063, paragraph 34).
- 22 In order for such an interest to be present, the annulment of the measure must of itself be capable of having legal consequences or, in accordance with a different form of words, the action must be liable, if successful, to procure an advantage for the party who has brought it (see Case T-310/00 *MCI v Commission* [2004] ECR II-3253, paragraph 44 and the case-law cited).
- 23 Furthermore, it is the applicant itself which must prove that it has an interest in making its application (order of the President of the Second Chamber of the Court of 31 July 1989 in Case 206/89 *R S. v Commission* [1989] ECR 2841, paragraph 8; order of 30 April 2003 in Case T-167/01 *Schmitz-Gotha Fahrzeugwerke v Commission* [2003] ECR II-1873, paragraph 58; and order of 15 May 2013 in Case T-413/12 *Post Invest Europe v Commission*, not published in the ECR, paragraph 23).
- 24 Moreover, it should be noted that the condition laid down in the fourth paragraph of Article 263 TFEU, that a natural or legal person must be directly concerned by the decision being challenged, requires inter alia that the contested measure must directly affect the legal situation of the individual.
- 25 First, as regards the point raised by the applicant that the activities of its members are compromised in so far as the word 'Edam' can no longer be used freely, it should be noted that Article 1 of the contested regulation provides:

'The designation contained in Annex I to this Regulation shall be entered in the Register.

Notwithstanding the first paragraph, the name "Edam" may continue to be used within the territory of the Union, provided the principles and rules applicable in its legal order are respected.'

- 26 Recital 8 in the preamble to the contested regulation reads: 'Pursuant to the second subparagraph of Article 13(1) of Regulation ... No 510/2006, the term "Edam" may continue to be used provided the principles and rules applicable in the Union's legal order are respected.'
- 27 The second subparagraph of Article 13(1) of Regulation No 510/2006, to which recital 8 in the preamble to the contested regulation relates, provides that '[w]here 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'.
- 28 Lastly, point 4.8 of the summary of the specification of the PGI at issue, contained in the annex to the contested regulation, states that through inter alia the use of the name 'Edam Holland', it will be made clear to consumers that Edam Holland is a different product from 'other Edam cheeses'.
- 29 It follows from the foregoing that the contested regulation clearly provides that the name 'Edam' may continue to be used, inter alia for the marketing of cheeses, provided the principles and rules applicable in the Union's legal order are respected.

- 30 Therefore, annulment of the contested regulation would not be of any advantage to the applicant's members in that regard (see, to that effect, in the case of another PGI, order in *Unione provinciale degli agricoltori di Firenze and Others v Commission*, paragraph 18 above, paragraph 33). Those members are still entitled to use the name 'Edam' and must, in any event, continue to respect the principles and rules applicable in the Union's legal order.
- 31 Moreover, since the contested regulation provides that the word 'Edam' may continue to be used for the marketing of cheeses, that regulation does not affect directly the legal situation of the applicant's members (see, to that effect, in the case of another PGI, Case C-343/07 *Bavaria and Bavaria Italia* [2009] ECR I-5491, paragraphs 41 to 45).
- 32 As regards the point raised by the applicant, in response to the measures of organisation of procedure, that the contested regulation would expose its members to the risk of prosecution for using the word 'Edam', it should be noted that an applicant cannot rely on future uncertain circumstances to establish its interest in seeking annulment of the contested measure (see Case T-189/08 *Forum 187 v Commission* [2010] ECR II-1039, paragraph 84 and the case-law cited).
- 33 In that context, the interest in bringing proceedings can result from a genuine risk that the applicant's legal position will be affected by legal proceedings or where the risk of legal proceedings was vested and present at the date on which the action was brought before the EU judicature (see Joined Cases T-309/04, T-317/04, T-329/04 and T-336/04 *TV 2/Danmark and Others v Commission* [2008] ECR II-2935, paragraph 79 and the case-law cited).
- 34 In the present case, it is sufficient to note that the applicant's approach is based merely on assertions to that effect without any evidence that the risk alleged is genuine or was vested and present at the date on which the action was brought. That argument must therefore be rejected.
- 35 Secondly, as regards the point that the contested regulation entails a risk that some packaging that includes the word 'Edam', used with illustrations referring to the Kingdom of the Netherlands, might be regarded as being in breach of Regulation No 510/2006, the applicant's approach is once again based merely on assertions that do not prove that the risk alleged is genuine or was vested and present at the date on which the action was brought.
- 36 Furthermore, EU law does not permit the labelling of food to be such that it misleads consumers, inter alia as to the origin or provenance of that food (see, to that effect, the general principle established in Article 16 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1); see also, more specifically, Article 2(1)(a)(i) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29)).
- 37 The applicant moreover acknowledged in its response to the measures of organisation of procedure that the provisions referred to in paragraph 36 above sought to 'prevent consumers being misled as a result, inter alia, of the use of the word 'Edam' together with references [to the Netherlands]'.
- 38 It follows that annulment of the contested regulation would not be of any advantage to the applicant's members in that regard, in so far as such annulment would not remove the obligation that exists under EU law not to mislead consumers as to the origin or provenance of food (see, to that effect, with regard to a prior legal obligation, order of 3 July 2007 in Case T-212/02 *Commune de Champagne and Others v Council and Commission* [2007] ECR II-2017, paragraph 132).

- 39 Thirdly, the argument that the economic activities of the applicant's members would be impeded since undertakings operating in the dairy sector could no longer sell milk produced in Germany for the manufacture of Edam Holland is based merely on unsubstantiated assertions. In particular, when questioned in that regard in the context of the measures of organisation of procedure, the applicant acknowledged, in essence, that even if milk had actually been sold by its members to the Netherlands it was not possible to determine precisely what that milk had been used for. The argument put forward in that regard therefore has no factual basis.
- 40 The applicant's request, contained in its response to the measures of organisation of procedure, that the Commission and the interveners should be required to provide evidence that German milk sold to the Netherlands was not used to manufacture Edam must be rejected since it is the applicant itself which must provide evidence of its interest in bringing proceedings.
- 41 In any event, under Article 2 of the applicant's articles of association, its object, in the interests of the milk and milk product processing undertakings which belong to it, is to undertake and support actions, whether or not by litigation, inter alia in respect of opposition to the registration of designations of origin according to the EU rules. Paragraph 3 of the applicant's internal rules, which were adopted after those articles of association, states that the applicant 'may intervene only if its members submit applications for registration, or for refusal or rejection of registration'. In the present case, it is common ground that the applicant's members which submitted applications for refusal or rejection through the applicant are producers or distributors of Edam, as is clear from the statement of objection lodged with the German authorities and from the applicant's presentation of its action before this Court. The milk producers, which may or may not be the applicant's members, did not, as such, object to registration of the PGI at issue. It follows that the applicant cannot, in any event, intervene before this Court in order to represent the interests of some of its members which have not submitted applications for refusal of registration of the PGI at issue.
- 42 Fourthly, the argument put forward by the applicant that it has an individual interest due to the rejection of its objection by the Commission is based on an incorrect premiss. In particular, it is clear from the documents in the case that only the Federal Republic of Germany — and not the applicant — was recognised by the Commission as having lodged an admissible objection (recital 2 in the preamble to the contested regulation). The applicant has not called that finding into question in the context of the action. Moreover, only the Federal Republic of Germany — and not the applicant — was invited by the Commission to engage in appropriate consultations in order to reach an agreement within the meaning of Article 7(5) of Regulation No 510/2006. The applicant was not therefore recognised by the Commission as being an 'interested party' within the meaning of that article. The applicant has not called that finding into question in the context of the action. In view of those factors, the applicant cannot claim that the Commission rejected its objection in the present case. In any event, it should be noted that the second subparagraph of Article 7(2) of Regulation No 510/2006 provides that natural or legal persons having a legitimate interest and being established or resident in a Member State may object to the proposed registration by lodging a duly substantiated statement with that Member State within a time-limit permitting an objection in accordance with paragraph 1 of that article. Article 7(1) of Regulation No 510/2006 provides inter alia that 'any Member State' may object to the registration proposed, by lodging a duly substantiated statement with the Commission. It follows that, contrary to what the applicant contends, in essence, in its pleadings, natural or legal persons having a legitimate interest and being established or resident in a Member State are not entitled to lodge an objection directly with the Commission (see, to that effect, order of 11 September 2007 in Case T-35/06 *Honig-Verband v Commission* [2007] ECR II-2865, paragraph 51).
- 43 Fifthly, as regards the point raised by the applicant in its response to the measures of organisation of procedure that producers who are entitled to use the quality label for the PGI at issue have a competitive advantage over its members, again it is based merely on an assertion without any substantiation. In particular, the applicant has not provided any evidence to show that its members'

products are actually competing with products which are entitled to use the PGI at issue or that the products which the applicant regards as competing necessarily enjoy a competitive advantage as a result of bearing the abovementioned label.

- 44 Furthermore, it cannot be inferred from Regulation No 510/2006 that the purpose of that regulation was to grant a competitive advantage to producers which are entitled to use a PGI. In particular, Regulation No 510/2006 had, among other objectives, only that of ensuring ‘fair competition’ between the producers of products bearing indications of origin (recital 6 in the preamble to that regulation). Therefore, in the absence of more detailed evidence, the applicant’s argument must be rejected.
- 45 Furthermore, it should be noted that the contested regulation is not intended to abolish a right held by the applicant’s members, but to grant a new right to all operators, including the applicant’s members if they so wish, whose products comply with the specification set out in that regulation. Therefore, the point raised by the applicant constitutes a purely factual point from which no unfavourable effect of the contested regulation on the legal position of its members can be inferred (see, to that effect, order of 15 October 2013 in Case T-13/12 *Andechser Molkerei Scheitz v Commission*, not published in the ECR, under appeal, paragraphs 38 and 39).
- 46 Furthermore, the point raised by the applicant is not such as to prove, save in specific circumstances, that the condition that those members must be directly concerned is fulfilled (see, to that effect, Joined Cases 10/68 and 18/68 *Eridania and Others v Commission* [1969] ECR 459, paragraph 7; order of 18 February 1998 in Case T-189/97 *Comité d’entreprise de la Société française de production and Others v Commission* [1998] ECR II-335, paragraph 48; and order of 21 September 2011 in Case T-343/10 *Etimine and Etiproduits v ECHA* [2011] ECR II-6611, paragraph 41). Therefore, in the absence of more detailed evidence provided by the applicant, the argument at issue does not show that the applicant’s members are directly concerned by the contested regulation.
- 47 In the light of all of those factors, the action must be dismissed as inadmissible.

Costs

- 48 Under Article 87(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the applicant has been unsuccessful, it must be ordered to pay, in addition to its own costs, those incurred by the Commission, in accordance with the form of order sought by the Commission.
- 49 In accordance with the first subparagraph of Article 87(4) of the Rules of Procedure, the Kingdom of the Netherlands must be ordered to bear its own costs. In accordance with the third subparagraph of Article 87(4) of the Rules of Procedure, the NZO must be ordered to bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**
2. **Schutzgemeinschaft Milch und Milcherzeugnisse eV is ordered to bear its own costs and those incurred by the European Commission.**
3. **The Kingdom of the Netherlands and the Nederlandse Zuivelorganisatie are ordered to bear their own costs.**

Luxembourg, 3 September 2014.

E. Coulon
Registrar

S. Frimodt Nielsen
President