



## Reports of Cases

ORDER OF THE COURT (Seventh Chamber)

6 October 2015\*

(Appeal — Article 181 of the Rules of Procedure of the Court of Justice — Agriculture — Regulation (EC) No 510/2006 — Register of protected designations of origin and protected geographical indications — Registration of the designation ‘Edam Holland’ — Producers using the name ‘Edam’ — Absence of a legal interest in bringing proceedings)

In Case C-517/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 14 November 2014,

**Schutzgemeinschaft Milch und Milcherzeugnisse e.V.**, established in Berlin (Germany), represented by M. Loschelder and V. Schoene, Rechtsanwälte,

appellant,

the other parties to the proceedings being:

**European Commission**, represented by B. Schima, J. Guillem Carrau and G. von Rintelen, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

**Kingdom of the Netherlands**, represented by B. Koopman and M. Bulterman, acting as Agents,

**Nederlandse Zuivelorganisatie**, established in Zoetermeer (Netherlands), represented by P. van Ginneken and G. Béquet, advocaten,

interveners at first instance,

THE COURT (Seventh Chamber),

composed of J.-C. Bonichot, President of the Chamber, J.L. da Cruz Vilaça and C. Lycourgos (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, in accordance with Article 181 of the Rules of Procedure of the Court of Justice,

\* Language of the case: German.

makes the following

### Order

- 1 By its appeal, Schutzgemeinschaft Milch und Milcherzeugnisse e.V. seeks to have set aside the order of the General Court of the European Union in *Schutzgemeinschaft Milch und Milcherzeugnisse v Commission* (T-112/11, EU:T:2014:752; ‘the order under appeal’), by which the General Court dismissed its action seeking 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; hereinafter the ‘contested Regulation’)

### Legal context

*Regulation (EC) No 510/2006*

- 2 According to recital 14 in the preamble to 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; hereinafter the ‘basic Regulation’), which was in force at the time of the facts at issue:

‘The registration procedure should enable any natural or legal person having a legitimate interest in a Member State or a third country to exercise their rights by notifying their objections.’

- 3 Article 7(1) and (2) of the basic Regulation provided:

‘1. Within six months from the date of publication in the *Official Journal of the European Union* provided for in the first subparagraph of Article 6(2), any Member State or third country may object to the registration proposed, by lodging a duly substantiated statement with the [European] Commission.

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

In the case of natural or legal persons established or resident in a Member State, such statement shall be lodged with that Member State within a time-limit permitting an objection in accordance with paragraph 1.

...’

- 4 Article 13(1), second subparagraph, of the basic Regulation stated:

‘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.’

### *The contested Regulation*

5 According to recital 8 in the preamble to the contested Regulation:

‘It appears that the objectors did not refer to the entire name “Edam Holland” when claiming that registration would jeopardise the existence of names, trademarks or products and that the name proposed for registration is generic, but only to one element of it, namely “Edam”. However, protection is granted to the term “Edam Holland” as a whole. Pursuant to the second subparagraph of Article 13(1) of [the basic Regulation], the term “Edam” may continue to be used provided the principles and rules applicable in the Union’s legal order are respected. For the sake of clarification, the specification and the summary have been modified accordingly.’

6 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.’

7 Annex II to the contested Regulation includes the following definitions:

‘...

4. Specification ...

4.1. Name “Edam Holland”

4.2. Description Edam Holland is a naturally matured semi-hard cheese. It is produced in the Netherlands from cows’ milk obtained from Dutch dairy farms and is matured to a consumer-ready product in Dutch maturing rooms. ...’

### **Background to the dispute**

8 The background to the dispute was set out as follows in paragraphs 1 to 7 of the order under appeal:

‘1 The Commission ... on 1 March 2008, published an application for registration within the meaning of Article 6(2) of [the basic Regulation] ... . 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 ... “Edam Holland” [hereinafter the “PGI at issue”].

2 On 26 June 2008, the [appellant] ... lodged a statement of objection to the registration of the PGI at issue with the German authorities under Article 7(2) of [the basic Regulation].

3 In that statement of objection the [appellant] 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 [appellant'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 [the basic Regulation].
- 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 [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).'

### **The proceedings before the General Court and the order under appeal**

- 9 By application lodged at the Registry of the General Court on 23 February 2011, the appellant sought annulment of the contested Regulation.
- 10 The Kingdom of the Netherlands and the NZO were granted leave to intervene in support of the form of order sought by the Commission, which submitted that the action should be dismissed.
- 11 As it took the view that it had sufficient information from the documents before it, the General Court decided, pursuant to Article 113 of its Rules of Procedure, to give its decision without taking further steps in the proceedings and dismissed the action as being inadmissible.

### **Forms of order sought**

- 12 The appellant submits that the Court should:
  - Primarily, set aside the order under appeal and annul the contested Regulation;
  - in the alternative, set aside the order under appeal and refer the case back to the General Court; and
  - order the Commission to pay the costs both at first instance and on appeal.
- 13 The Commission contends that the Court should:
  - dismiss the appeal; and
  - order the appellant to pay the costs.
- 14 The Kingdom of the Netherlands requests the Court of Justice to dismiss the appeal.
- 15 The NZO requests that the Court should:
  - primarily, dismiss the appeal;

- in the alternative, should the appeal be upheld, refer the case back to the General Court;
- in the further alternative, should the appeal be upheld and the Court decide to rule on the action itself, maintain the contested Regulation in force.

### **The appeal**

- 16 Under Article 181 of its Rules of Procedure, where the appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court of Justice may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal in whole or in part.
- 17 It is appropriate to apply that provision in the context of the present appeal.
- 18 In support of its appeal, the appellant puts forward four grounds of appeal.

### *The first ground of appeal*

#### Arguments of the appellant

- 19 In its first ground of appeal, the appellant submits that the General Court erred in law in failing to recognise its legal interest in bringing proceedings resulting from the fact that the contested Regulation does not make it clear that the term ‘Edam’ is a generic name within the meaning of Article 13(1), second subparagraph, of the basic Regulation and that it can, on that basis, continue to be used for the marketing of cheeses. This lack of clarity, the appellant submits, seriously undermines its legal position because it follows from the Court’s case-law that there is a presumption under which each element of a compound name is protected separately. Consequently, the appellant’s legal interest in bringing proceedings is established and the General Court erred in dismissing its action as being inadmissible.
- 20 These arguments are disputed by the Commission.

#### Findings of the Court

- 21 Recital 8 in the preamble to the contested Regulation states, by expressly referencing Article 13(1), second subparagraph, of the basic Regulation, that ‘the term “Edam” may continue to be used’. That provision of the basic Regulation provided that, when the name of an agricultural product or foodstuff, which is part of a name registered in the register of protected designations of origin and protected geographical indications, is generic, the commercial use of that name does not infringe the protection of the aforementioned registered name. In this respect the Commission determined, in Article 1 of the contested Regulation, that, since it constitutes a generic designation, the name ‘Edam’ could, notwithstanding the registration of the PGI at issue, continue to be used within the territory of the European Union, provided that the principles and rules applicable in its legal order were respected.
- 22 It follows that the General Court did not err in law in finding, in paragraphs 29 and 30 of the order under appeal, that annulment of the contested Regulation would not be of any advantage to the appellant’s members since that regulation provides that the name ‘Edam’ may continue to be used, inter alia for the marketing of cheeses, on condition that the principles and rules applicable in the European Union’s legal order are respected.
- 23 It follows that the first ground of appeal must be rejected as being manifestly unfounded.

### *The second ground of appeal*

#### Arguments of the appellant

- 24 In its second ground of appeal, the appellant alleges that the General Court distorted the facts on which the appellant based its argument that the contested Regulation hinders the economic activities of its members, which consist in deliveries of milk to the Netherlands which is capable of being converted into Edam there. In support of its second ground of appeal, the appellant refers to facts and evidence intended to show that those deliveries are in fact made, noting that no other party to the proceedings has contested its claims, and concludes that the General Court distorted the facts in ruling that that argument of the appellant had no factual basis. Furthermore, it argues that the General Court, in several respects, distorted the facts on which it relies in paragraph 41 of the order under appeal.
- 25 The Commission takes issue with the arguments of the appellant in support of this ground of appeal.

#### Findings of the Court

- 26 As a preliminary point it should be noted that, in accordance with Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on a point of law only. The General Court has exclusive jurisdiction to find and establish the relevant facts and to assess the evidence. The establishment of the facts and the assessment of the evidence do not therefore, save where those facts and that evidence are distorted, constitute a point of law which is, as such, subject to review by the Court of Justice in the context of an appeal (judgment in *ICF v Commission*, C-467/13 P, EU:C:2014:2274, paragraph 26 and the case-law cited).
- 27 In the present case, however, in support of its second ground of appeal, the appellant merely refers to facts and evidence presented before the General Court relating to quantities of milk delivered by some of its members to the Netherlands in order to conclude that the economic activity of its members is adversely affected by the contested Regulation inasmuch as they can no longer sell milk produced in Germany for the production, in the Netherlands, of cheese that is protected by the PGI at issue. The appellant is thus asking the Court of Justice to make a finding and assessment of facts without indicating how those facts were distorted, something which is not within the jurisdiction of the Court of Justice.
- 28 Furthermore, with regard to the arguments relating to paragraph 41 of the order under appeal, in which the General Court concluded that the appellant could not appear before it in order to represent the interests of those of its members which are milk producers, suffice it to hold that, as the appellant itself acknowledged in paragraph 32 of its statement of appeal, those arguments are directed at an assessment which the General Court made for the sake of completeness. Consequently, those arguments must be rejected as irrelevant since they cannot in any event lead to annulment of the order under appeal.
- 29 It follows from the foregoing that the second ground of appeal must be rejected as being manifestly inadmissible.

*The third ground of appeal*

Arguments of the appellant

30 By its third ground of appeal, the appellant argues that the General Court committed an error of law in not recognising its legal interest in bringing proceedings stemming from its own right of appeal which it possesses under the basic Regulation.

31 The arguments presented by the appellant in support of this ground are disputed by the Commission.

Findings of the Court

32 Article 7(2), first subparagraph, of the basic Regulation provided that any natural or legal person having a legitimate interest, established or resident in a Member State other than that applying for the registration of protected designations of origin and protected geographical indications, or in a third country, may also object to the proposed registration by lodging a duly substantiated statement.

33 The second subparagraph of Article 7(2), however, required that, in the case of natural or legal persons established or resident in a Member State, such a statement had to be lodged with that Member State within a time-limit permitting an objection to be made in accordance with Article 7(1).

34 The General Court therefore did not err in law in concluding, in paragraph 42 of the order under appeal, that natural or legal persons having a legitimate interest and being established or resident in a Member State cannot lodge an objection directly with the Commission.

35 In those circumstances, the third ground of appeal must be rejected as being manifestly inadmissible.

*The fourth ground of appeal*

Arguments of the appellant

36 By its fourth ground of appeal, the appellant submits that its members are in a competitive relationship with Dutch producers of cheeses protected by the PGI at issue. It contends that the multitude of products marketed under the name 'Edam' and the risk of confusion to which consumers are consequently subject demonstrate that all 'Edam' products are in competition on the market.

37 The appellant also submits that the General Court breached its right to a fair hearing. The General Court, it contends, ought to have provided the parties with the opportunity to supplement their arguments concerning the existence of a situation of competition between the products which are sold under the name 'Edam' by the appellant's members and those products which are sold under the PGI at issue, since the General Court took the view that this competitive relationship had not been proven by the appellant, although the Commission had accepted the objection raised by the appellant to the registration of the PGI at issue and, consequently, acknowledged that it had a 'legitimate interest', as required by Article 7(2) of the basic Regulation, in making such an objection.

38 The appellant also takes issue with the findings of the General Court in paragraphs 44 to 46 of the order under appeal, in which the General Court held that the objective of the basic Regulation was to create equal conditions of competition for products which carry a mark of origin, that the contested Regulation did not seek to suppress a right held by the appellant's members and that, in any event, the arguments of the appellant were not capable of showing that its members would be directly affected by that regulation.

39 The arguments presented by the appellant in support of this ground of appeal are disputed by the Commission.

#### Findings of the Court

40 As regards, firstly, the argument relating to the relationship of competition between Dutch producers of cheeses protected by the PGI at issue and the appellant's members, suffice it to hold that, by merely reproducing certain aspects of its application made at first instance, the appellant is contending that the General Court distorted the evidence and facts which the appellant had presented before it, without, however, indicating how the General Court committed such a distortion. Such a line of argument must therefore be rejected as being manifestly inadmissible.

41 Next, with regard to the appellant's argument that the General Court infringed its right to a fair hearing, suffice it to point out, without it being necessary to examine whether the Commission in fact recognised the appellant as having a 'legitimate interest' within the meaning of Article 7(2) of the basic Regulation, that on 15 November 2013 the General Court invited the parties, by way of measures of organisation of procedure, to set out their views on several questions relating in particular to the appellant's legal interest in bringing proceedings. It follows that the appellant's argument that the General Court infringed its right to a fair hearing is manifestly unfounded.

42 Finally, concerning the arguments of the appellant relating to paragraphs 44 to 46 of the order under appeal, it must be stated, as the appellant itself acknowledges in paragraphs 58, 61 and 63 of its statement of appeal, that these are directed at an assessment made by the General Court for the sake of completeness, with the result that those arguments must be held to be irrelevant.

43 It follows from all of the foregoing that the fourth ground of appeal must be rejected as being in part manifestly inadmissible and in part manifestly unfounded.

44 In those circumstances, the appeal must be dismissed in its entirety.

#### Costs

45 Under Article 138(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

46 Since the Commission has applied for costs to be awarded against the appellant, and since the latter has been unsuccessful, the appellant must be ordered to pay the costs incurred by that institution.

47 Under Article 140(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the Kingdom of the Netherlands is to bear its own costs.

48 Under Article 184(4) of those Rules it is appropriate to decide that the NZO is also to bear its own costs.

On those grounds, the Court (Seventh Chamber) hereby orders:

- 1. The appeal is dismissed.**
- 2. Schutzgemeinschaft Milch und Milcherzeugnisse e.V. shall pay the costs.**
- 3. The Kingdom of the Netherlands and the Nederlandse Zuivelorganisatie shall bear their own respective costs.**



[Signatures]