

## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2019/1751

of 21 October 2019

**entering the name ‘Havarti’ (PGI) in the register of protected designations of origin and protected geographical indications**

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<sup>(1)</sup>, and in particular Article 15(1) and Article 52(3)(b) thereof,

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, the application sent by Denmark to the Commission on 5 October 2010 to register the name ‘Havarti’ as a protected geographical indication, was published in the *Official Journal of the European Union*<sup>(2)</sup>.
- (2) Germany, Spain, the US Dairy Export Council together with the National Milk Producers Federation and the International Dairy Foods Association, the Office of the United States Trade Representative, the Ministry of Foreign Affairs and Trade of New Zealand, the Dairy Companies Association of New Zealand (DCANZ) and Dairy Australia Limited, supported by the Australian Government opposed to the registration in accordance with Article 51(2) of Regulation (EU) No 1151/2012. These oppositions were deemed admissible.
- (3) The Commission received also two notices of opposition from ‘Camara Nacional de Productores de Leche’ of Costa Rica and from ‘Asociación de Desarrollo Lácteo’ (ASODEL) of Guatemala. However, no reasoned statements of opposition were submitted in accordance with Article 51(2) of Regulation (EU) No 1151/2012.
- (4) The Commission invited the interested parties in the admissible oppositions to engage in appropriate consultations. Upon request of Denmark, in accordance with Article 51(3) last subparagraph of Regulation (EU) No 1151/2012, by letters of 5 August 2014 and 22 September 2014 the Commission extended the deadline for each of the ongoing consultations for additional three months.
- (5) Given that no agreement was reached within the designated time frame, the Commission should adopt an implementing act deciding on the registration in accordance with the procedure referred to in Article 52(3)(b) of Regulation (EU) No 1151/2012.
- (6) The opponents claimed that ‘Havarti’ does not possess a specific quality, reputation or other characteristics that are attributable to the geographical origin. They consider that the registration of the name would be liable to mislead the consumers as to the true identity of the product in the light of the reputation and renown of an existing trademark. In their opinion, that registration would also jeopardise the existence of identical name, trademarks and products that have been legally on the market for at least 5 years. In addition, they alleged that the name at stake is presumed to have become generic for the following reasons: ‘Havarti’ has been subject to a Codex Alimentarius

<sup>(1)</sup> OJ L 343, 14.12.2012, p. 1.

<sup>(2)</sup> OJ C 20, 23.1.2014, p. 9.

Standard since 1966, it is listed in Annex B of the Stresa Convention of 1951 and it has its own tariff line. Production and consumption of 'Havarti' exists in several EU and non-EU countries, certain of which have a specific legal standard for it.

- (7) The Commission has assessed the arguments expressed in the reasoned statements of opposition in the light of the provisions of Regulation (EU) No 1151/2012, taking into account the results of the appropriate consultations carried out between the applicant and the opponents and it has concluded that the name 'Havarti' should be registered.
- (8) Concerning the alleged failure of the name 'Havarti' to comply with Article 5 of Regulation (EU) No 1151/2012, it should be noted that the registration of 'Havarti' as a protected geographical indication is applied for on the basis of its reputation that is attributable to its geographical origin, within the meaning of Article 5(2)(b) of Regulation (EU) No 1151/2012.
- (9) Denmark has submitted a number of specialised publications and references that demonstrate that a reputational link exists between Denmark and 'Havarti'. This cheese was granted with numerous distinctions, prizes, awards received in various national or international fora. The reputation of this product is also built on its specific method of production and historical 'savoir faire'.
- (10) In the opposition procedure the Danish authorities have also specified that reputation of 'Havarti' has been achieved through legislative initiatives and quality work for more than 100 years.
- (11) As regards the EU territory, 'Havarti' is produced essentially in Denmark. At the date of application Spain, Germany, Poland, Finland and Estonia were also producing limited quantities. The production of 'Havarti' in these Member States is not per se liable to put in question the link of 'Havarti' to Denmark. Quantities are very limited if compared with the overall production in Denmark. In particular, production of cheese labelled 'Havarti' in Spain started only in 2010 and became more substantial only after Denmark had lodged its application for registration of the name 'Havarti' as PGI with the Commission.
- (12) Denmark provided evidence that the overwhelming majority of the Danish consumers does recognise persistent link of 'Havarti' with Denmark. The results of a survey conclude that the vast majority of Danish consumers are familiar with 'Havarti' and associate it with Denmark. Outside Denmark, knowledge of 'Havarti' is extremely limited.
- (13) Spain also transmitted a study showing the results of a survey carried out in Spain on consumers' awareness of 'Havarti' and its origin. This study is not conclusive. The percentages of unawareness of the product itself and of unawareness of its Danish origin are high. Consumers have indicated several different countries as being at the origin of 'Havarti'. Such unawareness of the product and of its Danish origin may not be considered as positive awareness of any generic character of the name.
- (14) The opponents claimed also that the name should not be registered since it is liable to mislead the consumer as to the true identity of the product in the light of the reputation and renown of an existing trade mark. However, the reputation or renown of any relevant trade mark was not demonstrated. The way in which the consumer would be misled was not explained either.
- (15) Furthermore, the third-country opponents considered that the registration of 'Havarti' as a protected geographical indication would jeopardise the existence of the identical name 'Havarti', of trade marks and of products that have been legally produced and marketed for more than 5 years, this being one of the grounds for opposition listed in Article 10, paragraph 1, point (c) of Regulation (EU) No 1151/2012.
- (16) It appears that the third country opponents in this opposition procedure have not placed a cheese named 'Havarti' on the EU market. Therefore, the existence of a product bearing the name 'Havarti' and produced in these third countries is not affected by the registration of 'Havarti' as a protected geographical indication in the EU.

- (17) Regulation (EU) No 1151/2012 does not apply to the territory of third countries. Therefore, the registration of 'Havarti' as a protected geographical indication under Regulation (EU) No 1151/2012 is not liable to jeopardise the use of the name 'Havarti' on the market of third countries.
- (18) As regards trade marks already registered, applied for or established by use, in good faith, within the territory of the EU, prior to the date of the Denmark's application to register the name 'Havarti', in line with Article 14(2) of Regulation (EU) No 1151/2012 they are not affected by the registration of a PGI.
- (19) Spain and Germany have claimed that they have been producing a cheese named 'Havarti'. The registration of 'Havarti' as a protected geographical indication under Regulation (EU) No 1151/2012 would therefore jeopardise the existence of the name 'Havarti' referred to the product elaborated in Spain and Germany, which is identical to the name applied for registration on 5 October 2010.
- (20) In the light of the information included in the German and Spanish opposition and submitted to the Commission, it appears that the production of a cheese bearing the name 'Havarti' started in Spain in 2010 and it reached 5 100 tonnes in 2014. In Germany, only data concerning the production in 2012 are available (2 571 tonnes) but it is stated that Germany has produced a cheese bearing the name 'Havarti' for more than 20 years. In the light of the above, in accordance with Article 15(1)(a) of Regulation (EU) No 1151/2012, transitional periods should be granted to the operators in Spain and in Germany who started marketing a cheese product bearing the name 'Havarti' before the date of submission of the Danish application to the Commission in order to allow them to continue to use the name jeopardised by the registration while adjusting their production on the market. A period of 5 years should be considered appropriate for German and Spanish producers.
- (21) Lastly, the opponents submitted several pieces of evidence that allegedly show that the name in question is generic. However, having a specific Codex Alimentarius Standard as well as an inclusion of 'Havarti' in Annex B to the Stresa Convention does not imply that the said name has become generic. Tariff codes relate to customs issues and are therefore not relevant to intellectual property rights. Generic status in the EU can only be assessed with regard to the perception of consumers in the EU territory.
- (22) As regards the production data and perception of 'Havarti' within the EU, which has been assessed with reference to the claim concerning the alleged lack of link between the product and the geographical area, it should be concluded that 'Havarti' has not become generic within the EU.
- (23) Data submitted concerning the production and marketing of 'Havarti' outside the EU are not relevant, considering the principle of territoriality inherent to intellectual property rights in general and Regulation (EU) No 1151/2012 in particular, according to which the possible generic nature of a name is to be assessed in relation to the territory of the Union. The perception of this term outside the EU and the possible existence of related regulatory production standards in third countries are not deemed relevant to the present decision irrespective of whether those standards lay down rights to use labelling terms.
- (24) The proposal of opponents to alternatively register the name 'Danish Havarti' cannot be retained since it would not fulfil the conditions provided for by point (a) of paragraph 1 of Article 7 of Regulation (EU) No 1151/2012.
- (25) In order to allow the exhaustion of stocks already produced or on the market the application of this Regulation should be deferred.
- (26) In the light of the above, the name 'Havarti' should be entered in the 'register of protected designations of origin and protected geographical indications'.
- (27) The measures provided for in this Regulation are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS REGULATION:

*Article 1*

The name 'Havarti' (PGI) is registered.

The name in the first paragraph identifies a product from Class 1.3. Cheeses set out in Annex XI to Commission Implementing Regulation (EU) No 668/2014 <sup>(3)</sup>.

*Article 2*

For a transitional period of 5 years from the date of application of this Regulation, the name 'Havarti' may continue to be used by operators established in Germany and Spain who have started marketing a cheese product bearing the name 'Havarti' before 5 October 2010.

*Article 3*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 12 May 2020.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 October 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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<sup>(3)</sup> Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).