

ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
29 April 1999 *

In Case T-78/98,

Unione provinciale degli agricoltori di Firenze, an association governed by Italian law, established in Florence, Italy,

Unione Pratese degli Agricoltori, an association governed by Italian law, established in Prato, Italy,

Consorzio Produttori dell'Olio Tipico di Oliva della Provincia di Firenze, an association governed by Italian law, established in Florence,

Francesco Miari Fulcis, a farmer residing in Fiesole, Italy,

Bonaccorso Gondi, a farmer residing at Pontassieve, Italy,

Simone Gianozzi, a farmer residing at Barberino Val d'Elsa, Italy,

Antonio Morino, a farmer residing at Bagno a Ripoli, Italy,

represented by **Vittorio Chierroni**, of the Florence Bar, with an address for service in Luxembourg at the Chambers of **Franco Colussi**, 36 Rue de Wiltz,

applicants,

v

* Language of the case: Italian.

Commission of the European Communities, represented by José Luis Iglesias and Eugenio de March, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of Commission Regulation (EC) No 644/98 of 20 March 1998 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ 1998 L 87, p. 8), in so far as it provides for registration of the name 'Toscano' as a protected geographical indication on the basis of a product specification referring to additional geographical designations,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: B. Vesterdorf, President, J. Pirrung and M. Vilaras, Judges,

Registrar: H. Jung,

makes the following

Order

Legal background

- 1 Article 1 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1, hereinafter 'Regulation No 2081/92') lays down rules on the protection of designations of origin and geographical indications which may be afforded to certain agricultural products and certain foodstuffs.
- 2 Under Article 2(2)(b) of Regulation No 2081/92, geographical indication means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.
- 3 Registration of the name of an agricultural product or foodstuff as a protected designation of origin (PDO) or a protected geographical indication (PGI), which confers Community protection on such name, must comply with the conditions

laid down in Regulation No 2081/92 and, in particular, with a product specification defined at Article 4 of that regulation. In that connection Article 13 of the regulation provides:

‘1. Registered names shall be protected against:

- (a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;
- (b) any misuse, imitation or evocation, even if the true origin of the product 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;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the public as to the true origin of the product.

...’.

4 Regulation No 2081/92 provides for two registration procedures.

5 Under the 'normal' procedure provided for in Articles 5 to 7 of the regulation any group, defined as any association of producers and/or processors working with the same agricultural product or foodstuff or, subject to certain conditions, any natural or legal person, is entitled to apply for registration of a protected designation of origin or a protected geographical indication in respect of agricultural products or foodstuffs which it produces or obtains originating in the specific geographical area within the Member State in which that area is situated. The Member State checks that the application is justified and forwards it to the Commission which, if it concludes that the name qualifies for protection, inserts a notice to that effect in the *Official Journal of the European Communities*. If no statement of objections is notified to the Commission by a Member State or a natural or legal person in accordance with Article 7, the name is entered in a register kept by the Commission entitled 'Register of protected designations of origin and protected geographical indications'.

Article 17 of Regulation No 2081/92 provides for a 'simplified' registration procedure aimed at registration of names already existing in the Member States on the date of entry into force of the regulation. It provides that:

'1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.

3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.'

- 7 In accordance with Article 18 thereof, Regulation No 2081/92 entered into force on 25 July 1993.

Facts and procedure

- 8 By a letter dated 22 January 1994 the Italian Government transmitted to the Commission an application for registration under Article 17 of Regulation No 2081/92 of several names and, with specific reference to olive oil, of the name 'Toscana' or 'Toscano' as a protected designation of origin on the ground that the name constituted a geographical indication traditionally used in Italy.
- 9 On 6 December 1995 the Italian Government submitted to the Commission a registration file including a summary, a production specification and a technical, historical and cartographical report stating that its application related to the name 'Toscano' which 'may be accompanied by one of the following geographical indications: "Seggiano", "Colline Lucchesi", "Colline della Lunigiana", "Colline di Arezzo", "Colline Senesi", "Colline di Firenze", "Montalbano", "Monti Pisani" and "Chianti Classico"'.

- 10 By letter dated 11 March 1996 the Commission informed the Italian Government that, irrespective of whether its application was well founded, the names added as 'variants' of the main name 'Toscano' in the file forwarded on 6 December 1995 could not be registered under the simplified procedure laid down in Article 17 of Regulation No 2081/92 because they had not been communicated within the six-month period provided for under that article, which expired on 26 January 1994. It followed, the Commission said, that to be protected under Regulation No 2081/92 those names had to be communicated under the normal registration procedure and, moreover, that they could not enjoy the provisional protection provided for under Article 17(3) of that regulation.
- 11 By a letter dated 1 July 1996 the Italian Government replied to the Commission that, having regard to the latter's objections, it confirmed its application for registration only in respect of the main name 'Toscano', and that use by the producers concerned of additional names corresponding to certain specific parts of the geographical area concerned would remain optional. By a letter dated 9 December 1996 it again pointed out that it took note of the fact that the protection contemplated could be granted only to names submitted in accordance with Article 17 of Regulation No 2081/92, whilst at the same time stressing that it did not envisage making a specific application for protection in respect of the additional geographical names.
- 12 By letters dated 12 March and 2 April 1997 the Commission informed the Italian authorities of its view that the conditions laid down in Regulation No 2081/92 for registration of the name 'Toscano' as a protected designation of origin were not met, whilst pointing out that protection of that name as a protected geographical indication could be considered if the Italian authorities made an application in that connection.
- 13 On 10 November 1997 the scientific committee on designations of origin, geographical indications and certification of specificity ('the scientific committee') expressed the opinion that the application for registration of 'Toscano' extra virgin olive oil did not satisfy the conditions for the grant of a protected designation of origin but could meet the requirements to be granted a protected geographical indication.

- 14 By letter dated 15 January 1998 the Italian Government submitted to the Commission a formal application for registration of the name 'Toscano' as a protected geographical indication.
- 15 Acting upon that application, the Commission submitted to the committee referred to in Article 15 of Regulation No 2081/92 the draft registration of the name 'Toscano' as a protected geographical indication on the basis of a summary document which no longer mentioned the additional names.
- 16 The committee issued a favourable opinion on the draft and so the Commission adopted Regulation (EC) No 644/98 of 20 March 1998 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ 1998 L 87, p. 8, 'Regulation No 644/98' or 'the contested regulation') which, under the heading 'Oils and fats, olive oil, Italy' at paragraph A of the aforementioned annex, added the name 'Toscano (PGI)'.
- 17 The applicants are olive-oil producers established in the Tuscany region of Italy who use names such as 'Colline di Firenze' or similar names in order to market their products, and associations representing the collective interests of those producers.
- 18 By an application lodged at the Court Registry on 15 May 1998 the applicants brought this action. They are seeking the annulment of Regulation No 644/98 in so far as it provides for registration of the name 'Toscano' as a protected geographical indication, since the product specification on which registration was based includes other names of olive oil corresponding to certain areas of the Tuscany region which are freely used by certain producers such as the applicants and members of the applicant associations in order to market their products. They allege first that the Commission infringed Article 2 of Regulation

No 2081/92 by registering those additional names under the registration concerning the geographical indication 'Toscana'. Secondly, the Commission is alleged to have infringed Article 17 of Regulation No 2081/92 inasmuch as, no application for registration having been submitted within the period laid down in that article, those specific names could not be registered under the simplified procedure.

- 19 By a separate document lodged at the Court Registry on 23 July 1998, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure. The applicants submitted their observations on that objection on 29 September 1998.

Forms of order sought

- 20 In their application the applicants claim that the Court should:

- order production of the registration documents for the name 'Toscana';
- annul the contested regulation;
- order the Commission to pay the costs.

21 In its objection of inadmissibility the Commission claims that the Court should:

- dismiss the action as inadmissible;
- order the applicants to pay the costs.

Admissibility

22 Under Article 114 of the Rules of Procedure the Court of First Instance may, if a party so requests, decide the issue of admissibility without discussion of the substance of the case. Under Article 114(3), the remainder of the proceedings are oral unless the Court of First Instance decides otherwise. In the present case the Court considers that the file provides sufficient clarification and there is no need to open the oral procedure.

Parties' arguments

23 First, the Commission submits that, since the applicants have no interest in bringing proceedings, their application for annulment of Regulation No 644/98 is inadmissible. Regulation No 644/98, it submits, is of no legal effect as regards olive-oil producers using the name 'Colline di Firenze' or other similar names and, in particular, does not preclude them from continuing freely to use those indications of origin, the protected geographical indication 'Toscano' notwithstanding. Regulation No 644/98 registers for olive oil only the name 'Toscano'

and not additional names submitted out of time by the Italian Government. Accordingly, even if the applicants were to succeed, the annulment of Regulation No 644/98 would in no way alter their legal situation.

24 The Commission stresses, moreover, that if the applicants take the view that names such as 'Colline di Firenze' would in the future be eligible for protection as designations of origin, it is for them to submit an application for registration to that effect, in accordance with Article 5 of Regulation No 2081/92, as had been proposed to the Italian authorities by the scientific committee and by itself.

25 Secondly, the Commission considers that the applicants do not, in any event, have *locus standi* to challenge Regulation No 644/98. That is, it is submitted, an act of general application within the meaning of the second paragraph of Article 189 of the Treaty and an action challenging it is, as has been consistently held, inadmissible (Case 307/81 *Alusuisse v Council and Commission* [1982] ECR 3463, Case 26/86 *Deutz and Geldermann v Commission* [1987] ECR 941 and Joined Cases 250/86 and 11/87 *Refinarias de Açucar Reunidas (RAR) v Council and Commission* [1989] ECR 2045, summary publication). Nor are the applicants in the same situation as the applicant in Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, so that they cannot be considered to be individually and directly concerned under Article 173 of the Treaty. In that connection the fact that they have used names such as 'Colline di Firenze', which they may continue to do, does not mean that they are adversely affected by registration of the protected geographical indication 'Toscano' owing to certain attributes peculiar to them or a factual situation distinguishing them from any other person.

26 Finally, in the Commission's submission, an action for annulment by the applicant associations is inadmissible because, first, their members cannot bring such an action in an individual capacity and, secondly, because defence of the general and collective interests of certain categories of olive-oil producers is not

sufficient to establish that Regulation No 644/98 is of direct and individual concern to them (order in Case 60/79 *Fédération Nationale des Producteurs de Vins de Table et Vins de Pays v Commission* [1979] ECR 2429, at p. 2432).

- 27 In their application the applicants maintain that Regulation No 644/98 affects the interests of those producers of Tuscan olive oil who hitherto freely used, independently of the name 'Toscano', names such as 'Colline di Firenze' or other analogous indications in order to distinguish their high-quality products from other Tuscan oils. In fact, Regulation No 644/98, they maintain, compels those producers to use the names in question solely in the context of the protected geographical indication 'Toscano', owing to the fact that the product specification approved by the Commission defines those names as 'geographical sub-areas' or 'variants' of 'Toscano' oil. They maintain that that is detrimental to the image of those names, particularly in view of the fact that they could meet the conditions for protection as designations of origin under Regulation No 2081/92.
- 28 In their observations on the objection of inadmissibility the applicants contend that if the names which they use have not been registered with the result that they may continue to use them freely and independently their interests would not in fact be affected by Regulation No 644/98. However, that matter is not free from doubt and production of the product specification approved by the Commission is necessary, inasmuch as this would appear not to have been amended and thus confers unlawful protection on the names in question.
- 29 Finally, the applicants consider themselves to be individually concerned by Regulation No 644/98 as defined in the *Codorniu v Council* judgment cited above, inasmuch as it occasions them serious harm by preventing them henceforth from freely using the name 'Colline di Firenze' or other analogous names, on account of the unlawful protection afforded to those names by the

regulation. In that connection the applicant associations add that they represent the interests of producers in the region which use those names.

Findings of the Court

- 30 It has been consistently held that the admissibility of an action for annulment brought by a natural or legal person is dependent upon the condition that the person concerned demonstrate a legal interest in bringing proceedings (Case 88/76 *Société pour l'Exportation des Sucres v Commission* [1977] ECR 709, paragraph 19; order in Case 134/87 *Vlachou v Court of Auditors* [1987] ECR 3633, paragraph 8; order in Case T-6/95 *Cantine dei colli Berici v Commission*, not published in the ECR, paragraph 46, and judgment in Case T-117/95 *Corman v Commission* [1997] ECR II-95, paragraph 83). In particular, he must be able to demonstrate a personal interest in the annulment of the contested decision (see, for example, Case T-58/92 *Moat v Commission* [1993] ECR II-1443, paragraph 31).
- 31 In that connection the applicants submit that Regulation No 644/98 confers Community protection not only on the geographic indication 'Toscano' but also on the other olive-oil names mentioned in the product specification drawn up for the purposes of registration, with the result that it precludes olive-oil producers who, like them or like the members of the applicant associations, freely use those names from continuing to do so independently of the name 'Toscano'.
- 32 However, in regard to olive oil, Regulation No 644/98 registers as a protected geographical indication only the name 'Toscano' and not names such as 'Colline di Firenze' mentioned by the applicants. Since the latter names are not 'registered names' within the meaning of Article 13 of Regulation No 2081/92 it follows

that, contrary to the applicants' assertions, no Community protection whatever is conferred on those names under that regulation.

33 Thus, as the Commission also acknowledges, the commercial use of those names by olive-oil producers like the applicants or members of the applicant associations is not affected by Regulation No 644/98, in the same way as the applicants' right to submit an application for registration as designations of origin or geographical indications of the names in question under Article 5 of Regulation No 2081/92 remains unimpaired. Accordingly, the maintenance in force of Regulation No 644/98 can in no way affect their interests.

34 In those circumstances the applicants *qua* producers using names other than the protected geographical indication 'Toscano' cannot claim to be concerned by Regulation No 644/98, with the result that they have no legal interest in bringing proceedings for annulment under the fourth paragraph of Article 173 of the Treaty (see *Corman v Commission*, cited above, paragraph 83).

35 Accordingly, the action brought by the applicants in their capacity as farmers must be dismissed as inadmissible.

36 In so far as the action is brought by the applicant associations, it should be noted that, as has consistently been held, the defence of general and collective interests of a category of persons is not sufficient to establish the admissibility of an action for annulment brought by an association, with the result that, unless there are

special circumstances such as the role played in the procedure leading to adoption of the act at issue, an action for annulment brought by such an association is inadmissible if it could not have been brought by its members individually (order in Case C-409/96 P *Betodlares and Henrikson v Commission* [1997] ECR I-7531, paragraph 45).

- 37 In the present case the applicant associations rely solely on the fact that they represent the interests of olive-oil producers using the names at issue, and do not refer to individual producers other than the applicants whose action would be inadmissible. Thus, the action brought by the applicant associations must likewise be held to be inadmissible.
- 38 In the light of those considerations the action must be dismissed as inadmissible, and there is no need to grant the applicants' request for production of documents.

Costs

- 39 Under Article 87(2) of the Rules of Procedure of the Court of First Instance the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the applicants have been unsuccessful, they must, having regard to the form of order sought by the Commission, be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The action is dismissed as inadmissible.
2. The applicants shall bear the costs.

Luxembourg, 29 April 1999.

H. Jung

Registrar

B. Vesterdorf

President