COMMISSION REGULATION (EU) No 32/2010

of 14 January 2010

entering a name in the register of protected designations of origin and protected geographical indications [Jihočeská Zlatá Niva (PGI)]

THE EUROPEAN COMMISSION,

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

Having regard 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 [1], and in particular the third and fourth subparagraphs of Article 7(5) thereof,

Whereas:

(1) Pursuant to Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, the Czech Republic's application to register the name 'Jihočeská Zlatá Niva' was published in the *Official Journal of the European Union* [2].

(2) Slovakia submitted an objection to the registration under Article 7(1) of Regulation (EC) No 510/2006. The objection was deemed admissible under points (b) and (c) of the first subparagraph of Article 7(3) of that Regulation.

(3) Slovakia indicated in the objection that the registration of the name in question would be contrary to Article 3(4) of Regulation (EC) No 510/2006 and would jeopardise the existence of trademarks registered on the territory of Slovakia.

(4) By a letter dated 24 June 2008, the Commission asked the Member States concerned to seek agreement among themselves in accordance with their internal procedures.

(5) Given that no agreement was reached between Slovakia and the Czech Republic within the designated timeframe, the Commission must adopt a decision in accordance with the procedure outlined in Article 15(2) of Regulation (EC) No 510/2006.

(6) In the light of the information provided by Slovakia, the Commission cannot conclude that the registration of the name 'Jihočeská Zlatá Niva' would be contrary to Article 3(4) of Regulation (EC) No 510/2006. While the objector may have shown evidence that the name 'Jihočeská Zlatá Niva' can be associated with a name 'Niva', no evidence has been provided of the degree of distinctiveness the trademark acquired due to its reputation, renown and the length of time it was used. Therefore, on the basis of the information available, it has not been shown that the registration of 'Jihočeská Zlatá Niva' would be liable to mislead consumers as to the true identity of the product.

(7) No evidence has been presented which would allow the Commission to conclude that having regard to the fair and traditional usage and the actual likelihood of confusion, registration of the name 'Jihočeská Zlatá Niva' as a protected geographical indication would run counter to the provisions laid down in Article 7. According to the evidence presented to the Commission, the term 'Niva' was used in a generic way for a type of cheese, within the Czech and Slovak Republic, since tens of years. Moreover, registration of the said name as a protected geographical indication would not require the cancellation or invalidation of the trade marks, since they were applied for prior to the date of submission of the registration application to the Commission, nor hinder continued use of the same. Furthermore, according to the information available to the Commission, the exclusive right of the proprietor of the said trade marks would not entitle him to prohibit a third party from using, in the course of trade and in accordance with honest practices in industrial or commercial matters, an indication concerning geographical origin pursuant to Article 6 of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade [3].

(8) In the light of the above, the name 'Jihočeská Zlatá Niva' should be entered in the 'Register of protected designations of origin and protected geographical indications'.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Protected Geographical Indications and Protected Designations of Origin,

[1] OJ L 93, 31.3.2006, p. 12.
[2] OJ C 249, 24.10.2007, p. 31.
[3] OJ L 299, 8.11.2008, p. 25.

HAS ADOPTED THIS REGULATION:

Article 1

The designation contained in the Annex to this Regulation shall be entered in the register.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 14 January 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.3. Cheeses

CZECH REPUBLIC

Jihočeská Zlatá Niva (PGI)