COMMISSION REGULATION (EU) No 702/2010

of 4 August 2010

entering a name in the register of protected designations of origin and protected geographical indications (Olomoucké tvarůžky (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 subparagraph of Article 7(5) thereof,

Whereas:

(1) Pursuant to the first subparagraph of 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 'Olomoucké tvarůžky' was published in the *Official Journal of the European Union* [2].

(2) Germany, on 7 January 2008, and Austria, on 31 January 2008 and 4 February 2008, submitted objections to the registration under Article 7(1) of Regulation (EC) No 510/2006. The objections were deemed admissible under points (a), (c) and (d) of the first subparagraph of Article 7(3) of that Regulation.

(3) By letters dated 6 May 2008, the Commission asked the Member States concerned to seek agreement among themselves in accordance with their internal procedures.

(4) Given that no agreement was reached between the Czech Republic and Austria nor between the Czech Republic and Germany within the designated time-frame, the Commission should adopt a decision in accordance with the procedure referred to in Article 15(2) of Regulation (EC) No 510/2006.

(5) Concerning the alleged failure of compliance with Article 2 in respect of the lack of specificity of the product, the product specification sets out details relating to the production process and characteristics of the final product, in particular the organoleptic characteristics thereof, that do not give rise to there being any manifest error.

(6) Regarding the objection that pursuant to Article 5(1) of Regulation (EC) No 510/2006 only a group shall be entitled to apply for registration it is to be noted that in the present case the applicant group was a single company that met the conditions for filing an application set out in Article 2 of Commission Regulation (EC) No 1898/2006 [3], which lays down detailed rules of implementation of Regulation (EC) No 510/2006. Moreover, the applicant is the only producer in the designated region and the only producer of such a cheese in that area or its surrounding areas.

(7) The terms 'Olmützer Quargel' and 'Olomoucké tvarůžky' were found to be names of similar cheeses in German and Czech languages respectively and that the terms have common historic origins referring to the town of Olomouc in the Czech Republic. The statements of objection from Austria showed that trade marks including the term 'Olmützer Quargel' had been registered prior to the application for registration of the term 'Olomoucké tvarůžky' as a protected geographical indication. As the names have common origins and given the visual similarities between the products, the application of the protection envisaged by Article 13 of Regulation (EC) No 510/2006, and in particular point (b) of paragraph 1 thereof, could have the result that 'Olomoucké tvarůžky', if registered, would be found by a competent court to be protected against the use of the name 'Olmützer Quargel'. The evidence therefore shows that the continued existence of the name 'Olmützer Quargel' would be jeopardised by the registration of 'Olomoucké tvarůžky', in accordance with Article 7(3)(c) of Regulation (EC) No 510/2006. Moreover, the evidence shows that the use of the name 'Olmützer Quargel' referred to a product having a common origin with 'Olomoucké tvarůžky', but was generally not meant to exploit the reputation of the latter name. For these reasons, and in the interests of fairness and traditional usage, the maximum transitional period foreseen by Article 13(3) of Regulation (EC) No 510/2006 should be foreseen.

(8) Concerning trade marks containing the term 'Olmützer Quargel' that were protected through registration or acquired by use prior to the application for registration of 'Olomoucké tvarůžky', the conditions of Article 14(1) of Regulation (EC) No 510/2006 not being met, the said trade marks cannot be invalidated nor can their continued use be hindered by virtue of the registration of 'Olomoucké tvarůžky' as a protected geographical indication, provided the general requirements under trademark legislation are otherwise met.

[1] OJ L 93, 31.3.2006, p. 12.
[2] OJ C 182, 4.8.2007, p. 20.
[3] OJ L 369, 23.12.2006, p. 1.

(9) The prohibition on registration of names that have become generic laid down in Article 3(1) of Regulation (EC) No 510/2006 refers to the whole name proposed for registration. This does not prevent the registration of a name composed of more than one part, even if a component part of the name or a translation thereof may have generic status, provided the name as a whole has not become generic. Furthermore, a statement of objection pursuant to Article 7(3)(d) of the said Regulation, regarding the generic status of a name, is limited to the name for which registration is requested. While the name proposed for registration is 'Olomoucké tvarůžky' the evidence provided in the statements of objection referred to the alleged general use of the term 'Olmützer Quargel' in Germany and Austria, and not to that of 'Olomoucké tvarůžky'. No evidence has been provided in the statements of objection to show general usage comprising or including the name proposed for registration.

(10) Whereas protection is granted for the term 'Olomoucké tvarůžky' as a whole, the non-geographical component of that term may be used, and used in translation, throughout the Union, provided the principles and rules applicable in the Union's legal order are respected.

(11) In the light of the above, the name 'Olomoucké tvarůžky' should be entered in the register of protected designations of origin and protected geographical indications subject to a transitional period of five years during which time the term 'Olmützer Quargel' may continue to be used in circumstances that, but for the transitional period, could be contrary to the protection provided for by Article 13(1) of Regulation (EC) No 510/2006.

(12) 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,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

The term 'Olmützer Quargel' may be used to designate cheese not complying with the specification for 'Olomoucké tvarůžky' for a period of five years from the date of entry into force of this Regulation.

Article 3

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, 4 August 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

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

Class 1.3. Cheeses

CZECH REPUBLIC

Olomoucké tvarůžky (PGI)