# Commission Implementing Regulation (EU) 2018/506 of 26 March 2018 entering a name in the register of traditional specialities guaranteed (‘Pražská šunka’ (TSG))

## COMMISSION IMPLEMENTING REGULATION (EU) 2018/506

## of 26 March 2018

## entering a name in the register of traditional specialities guaranteed (‘Pražská šunka’ (TSG))

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[(1)], and in particular Articles 15(1) and 52(3)(b) thereof,

Whereas:

(1) Pursuant to Article 50(2)(b) of Regulation (EU) No 1151/2012, the application from the Czech Republic to register the names ‘Пражка шунка’ (BG), ‘Jamón de Praga’ (ES), ‘Pražská šunka’ (CS), ‘Prag Skinke’ (DA), ‘Prager Schinken’ (DE), ‘Praha sink’ (ET), ‘Χοιρομέρι Πράγας’ (EL), ‘Prague Ham’ (EN), ‘Jambon de Prague’ (FR), ‘Praška šunka’ (HR), ‘Prāgas šķiņķis’ (LV), ‘Prahos kumpis’ (LT), ‘Prágai minőségi sonka’ (HU), ‘Perżut ta' Praga’ (MT), ‘Praagse Ham’ (NL), ‘Szynka Praska’ (PL), ‘Fiambre de Praga’ (PT), ‘Jambon de Praga’ (RO), ‘Pražská šunka’ (SK), ‘Praška šunka’ (SL), ‘Prahalainen kinkku’ (FI), ‘Pragskinka’ (SV) as Traditional Speciality Guaranteed (TSG) was published in the *Official Journal of the European Union*[(2)]. The name ‘Pražská šunka’ identifies a ham product covering the following three variants: ‘Pražská šunka’ on the bone, boneless ‘Pražská šunka’ and tinned ‘Pražská šunka’.

(2) An application to register the name ‘Pražská šunka’ along with other linguistic variations thereof had already been published in 2012[(3)]. Austria, Italy, Germany and Slovakia had lodged oppositions. The Czech Republic had reached an agreement with all the opponents with the exclusion of Slovakia. The Commission had then proceeded to the re-publication of the product specification which had been substantially amended in order to partly take into account the claims and the remarks made by Slovakia.

(3) On 18 July 2016, the Commission received a notice of opposition from Slovakia, on 16 August 2016 from Serbia, and on 17 August 2016 from Austria.

(4) On 14 September 2016 the Commission received the reasoned statement of opposition from Slovakia, on 12 October 2016 from Serbia, and on 19 October 2016 from Austria.

(5) The opposition from Austria could not be continued. In accordance with Article 51(2) of Regulation (EU) No 1151/2012, the Commission only checks the admissibility of the reasoned statement of opposition received within two months from the reception of the related notice of opposition, which was not the case for the reasoned statement from Austria.

(6) After examining the reasoned statements of opposition from Serbia and Slovakia and founding them admissible, in accordance with Article 51(3) of Regulation (EU) No 1151/2012, the Commission invited the Czech Republic and Slovakia, by letter of 8 November 2016, and the Czech Republic and Serbia, by letter of 2 December 2016, to engage in appropriate consultations in view of reaching an agreement.

(7) An agreement was reached between the Czech Republic and Serbia. They agreed that the name should also be protected in Serbian language, in both Cyrillic and Latin characters, i.e. 'Praška šunka'/'Прашка шунка' (RS), and that Serbia should be granted a transitional period of three years to use the protected name on products not complying with the product specification of Pražská Šunka.

(8) The Commission considers that the content of that agreement is contrary neither to Regulation (EU) No 1151/2012 nor to the EU law. Article 15(1) of Regulation (EU) No 1151/2012, allowing the Commission to grant transitional period of three or more years for use of protected designations of origin and protected geographical indications contravening Article 13(1) of that Regulation, may be applied by analogy also to traditional specialities guaranteed[(4)]. However, this Regulation applying only in the EU territory, such a transitional period may concern only the products imported in the EU from Serbia which would be marketed in the EU under the protected name although not complying with the product specification. Such products should however not be marketed in the EU accompanied by the terms 'traditional specialty guaranteed', nor the abbreviation 'TSG' nor the EU related logo. Following the addition of the Serbian version among the registered names the consolidated version of the product specification should be published for information.

(9) In contrast, no agreement was reached between the Czech Republic and Slovakia within the designated timeframe. Therefore, the Commission should decide on registration taking into account the results of these appropriate consultations in accordance with the procedure referred to in Article 52(3)(b) of Regulation (EU) No 1151/2012.

(10) The main arguments of Slovakia as set out in its reasoned statements of opposition and in the consultations carried out with the Czech Republic can be summarised as follows.

(11) As first reason for opposition, Slovakia argues that the registration of the name would be incompatible with the terms of Regulation (EU) No 1151/2012. Slovakia claims that the method of production included in the product specification for the boneless 'Pražská šunka' is not 'traditional' because it is applied only since 1993 (after Czechoslovakia's split into the Czech Republic and Slovakia) and 30 years have not yet passed. Before 1993 'Pražská šunka' was produced under the Czechoslovak State Standards (ČSN), which set common rules for the production, supply, packaging, transport, storage and testing of meat products applicable in Czechoslovakia, which were applied throughout the whole territory of Czechoslovakia and that did not allow the method of production included in the product specification for the boneless 'Pražská šunka' TSG. Article 18 of Regulation (EU) No 1151/2012 requires that for a name to be registered as TSG either the production method correspond to a traditional practice or the raw materials or ingredients are those traditionally used, while, in accordance with the definition referred to in Article 3(3) of that Regulation, 'traditional' means proven usage for at

least 30 years. In the light of the above, the production method for the boneless 'Pražská šunka' TSG cannot correspond to the traditional practice referred to in Article 18 of Regulation (EU) No 1151/2012.

(12) Slovakia also claims that the requirement concerning the 'specific character', as defined in Article 3(5) of Regulation (EU) No 1151/2012 has not been met.

(13) As second reason for opposition, Slovakia contends that the product name 'Pražská šunka' is to be considered a generic term, i.e. it has become the common name of the product in the EU. This is demonstrated by the number of oppositions to the registration of the name: the fact that the same name is used for marketing the same, or similar, product in many countries would demonstrate that it is a generic name.

(14) The third reason for Slovakian opposition is that the name proposed for registration is lawful, renowned and economically significant for similar agricultural products or foodstuffs in Slovakia. The Slovak consumer is familiar with and purchases 'Pražská šunka' as a cooked product in polyamide casings. The 'Pražská šunka' in the boneless version, as described in the proposal, is unknown to Slovak consumers. According to the information provided by individual producers in the Slovak Republic, at least 1 208 tonnes of 'Pražská šunka' are currently produced per year. For Slovak producers, adapting or renaming the product would lead to considerable loss of revenue primarily because it would entail a steep increase in price of between 45 % and 92 % depending on the type and the quality category. Indeed, the product specification of 'Pražská šunka' TSG provides, for all the three versions, that the meat must have a minimum content of pure muscle protein in percentage by weight of 16 % while in Slovakia that percentage may be lower. Under the Slovak legislation 'Pražská šunka' may be marketed under three different categories of ham based on different percentages of pure muscle protein minimum content by weight: special ham (16 %), selected ham (13 %) and standard ham (10 %). Therefore, selected and standard ham could no longer be marketed in Slovakia under the registered name. Besides that price increase, the costs of purchasing moulds for making boneless 'Pražská šunka' should be also counted among the loss of revenue since in Slovakia this technology is not used in the production of 'Pražská šunka' (polyamide casings are used). Such purchase would involve the cost of EUR 70 per unit for ham weighing around 5 kg, meaning EUR 14 000 to produce 1 tonne of the finished product. Similarly, forming 'Pražská šunka' with the aid of film compared to production in polyamide casings would also result in increased costs for the purchase of foil and manual work totalling at least EUR 50/tonne for the finished product.

(15) Furthermore, three Slovak producers hold trade marks for 'Pražská šunka' and their use would be at risk.

(16) In addition to the reasoning above, Slovakia proposed that if, notwithstanding the allegations submitted, the Commission decide to register the name, Article 18(3) of Regulation (EU) No 1151/2012 could be taken into account by providing the name 'Pražská šunka' be accompanied by the claim 'made following the tradition of Czech Republic'. In alternative, that same name could be changed into 'Traditional Pražská šunka'.

(17) The Commission has assessed the arguments exposed in the reasoned statements of opposition from Slovakia 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 'Pražská šunka' should be registered.

(18) With reference to the first reason for opposition, Czech Republic has clarified that, even before 1993, 'Pražská šunka' was not covered by the Czechoslovak State Standards (ČSN). In that part of Czechoslovakia which corresponds today to Czech Republic 'Pražská šunka' was produced in accordance with the 'technical-economic standard' issued by the Czech section of the 'Masný průmysl' (meat sectors concern). In the late 1970s semi-preserved (pasteurised) boneless Pražská šunka was produced, in several plants of Czechoslovakia within the territory of the present Czech Republic, essentially following the elements which can be found in the product specification for boneless 'Pražská šunka' TSG: pasteurisation, use of moulds for oval shape, smoking and pork fat or pork fat and skin as a decorative layer.

(19) In addition, the same product, semi-preserved boneless 'Pražská šunka', has been produced for decades in other countries such as Austria and Germany. In the light of the above, it should be concluded that boneless 'Pražská šunka' and its production method correspond to traditional practice existing since more than 30 years.

(20) There is no requirement that a product must have a specific character for its name to be registered as TSG. Article 19(1)(b) refers to 'specific character' as an element of the description and the specific character of the product is sufficiently described for all three versions covered by the product specification.

(21) With reference to the second reason of opposition, there are no grounds to conclude that the term has become generic. Slovakia did not give any reasoning leading to such a conclusion. The fact that such a product is produced in several countries in Europe cannot be considered *per se* as a ground to conclude for genericity of such a name. In any event, genericity as such is not a ground for opposition for TSGs. TSGs can legally be produced anywhere, subject to complying with the product specification.

(22) As third reason of opposition, Slovakia contends that the use of the name is lawful, renowned and economically significant for similar agricultural product or foodstuffs in Slovakia. The Commission recognises these circumstances. However, it considers that first, the reason why the product produced in Slovakia may not be captured in the product specification for 'Pražská šunka' TSG can essentially be found in the circumstance that Slovakia has changed the recipe and the presentation of the product after the independence of both Czech and Slovak Republics, i.e. after 1 January 1993. Slovaks authorities reported that the decree creating the three categories of 1) special ham, 2) selected ham and 3) standard ham (based on the minimum content of pure muscle protein in percentage by weight, 16 %, 13 % and 10 % respectively) was adopted by the Slovak Ministry of Agriculture and the Slovak Ministry of Health on 18 August 2005. Before that date the minimum content of pure muscle protein in percentage by weight was 18 %. 100 % of 'Pražská šunka' produced in Slovakia with 18 % minimum content of pure muscle protein in percentage by weight would have qualified

for 'Pražská šunka' TSG. Slovak authorities have also reported that, at the same time, the presentation of the product was also changed with moulding and heat treatment being abandoned and replaced entirely by the product being stuffed into polyamide casings. Although Slovakia indicates that the production of 'Pražská šunka' evolved also in the Czech Republic after the independence, it clearly appears that it is in Slovakia that the method of production has been essentially and remarkably changed. Second, compared with the initial product specification published in 2010, Czech Republic has substantially softened the requirements of the product specification with the aim of including the largest number of production methods and therefore registering a well widespread and shared TSG. Indeed, all the admitted opponents in the two opposition procedures found an agreement with the exclusion of Slovakia. Third, the calculation of costs to adapt the production to the specifications of 'Pražská šunka' TSG seems not taking into account the fact that the metal moulds can be re-used over a long period. Fourth, in particular, the use of moulds is not compulsory, since alternatives are available. Plastic films may be used. Besides, EUR 50/tonne of finished product for the purchase of film foil and manual work does not seem constitute a disproportionate cost to afford.

(23) In addition, pursuant to Article 43 of Regulation (EU) No 1151/2012 and by analogy with the provisions applicable to Protected Designations of Origin and Protected Geographical Indications, trade marks which are applied for, registered, or established by use, if that possibility is provided for by the legislation concerned, in good faith within the territory of the Union, before the date on which the application for protection is submitted to the Commission, should be deemed to be allowed to continue to be used and renewed for that product notwithstanding the registration of the name. Trade marks which have been applied for, registered, or established by use, if that possibility is provided for by the Union or the Slovak legislation, in good faith before the date on which the application for registration of the name 'Pražská šunka' as TSG was submitted to the Commission are not affected by that registration.

(24) In the light of the above, the circumstances opposed by Slovakia as regards the lawful, renowned and economically significant use of the name, also in trade marks, in the territory of Slovakia are not sufficient to justify a rejection of the Czech application for registration. As regards the remaining proposals made by Slovakia, in the light of the reasons set out above, the Commission considers that it is not appropriate to provide that the registered name 'Pražská šunka' TSG is accompanied by the claim 'made following the tradition of the Czech Republic' in order to allow the Slovak 'Pražská šunka' to be marketed, without complying with the product specification of 'Pražská šunka' TSG, as issued from the tradition of Slovakia. In fact, Slovakia has not demonstrated that an alternative 'Slovak tradition' exists for the production of the product named 'Pražská šunka'. In addition, after two opposition procedures have been carried out, the product specification the registered name will refer to will no longer express a specific 'Czech tradition' but mainly a tradition shared among several EU Member States and third countries.