Commission Implementing Regulation (EU) 2015/39 of 13 January 2015 entering a name in the register of protected designations of origin and protected geographical indications (Focaccia di Recco col formaggio (PGI))

COMMISSION IMPLEMENTING REGULATION (EU) 2015/39

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entering a name in the register of protected designations of origin and protected geographical indications (Focaccia di Recco col formaggio (PGI))

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 Article 52(3)(b) thereof,

Whereas:

(1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Italy's application to register the name ‘Focaccia di Recco col formaggio’ was published in the *Official Journal of the European Union*[(2)].

(2) Portugal, the United Kingdom and Fresh Gourmet Catering LLC — a company based in Dubai, United Arab Emirates — lodged a notice of opposition to the registration pursuant to Article 51(1) of Regulation (EU) No 1151/2012. The Commission examined the notices of opposition from Portugal and the United Kingdom and found them to be admissible within the meaning of Article 10 of Regulation (EU) No 1151/2012. As Fresh Gourmet Catering LLC was found to lack a legitimate interest, its opposition was considered inadmissible within the meaning of Article 51(1) of the aforementioned Regulation.

(3) The notices of opposition on behalf of two clients (the first based in Portugal and the second in the United Kingdom) of an Italian company located in the geographical area which markets a deep-frozen product, primarily relate to the name and the fact that pre-cooking, deep-freezing and other preservation techniques are prohibited.

(4) By letters of 20 December 2013, the Commission invited Italy and Portugal on the one hand, and Italy and the United Kingdom on the other, to reach an agreement pursuant to Article 51(3) of the aforementioned Regulation. In accordance with that Article, Italy submitted its report concerning the end of the consultation period, by letters dated 15 April 2014. As these Member States were unable to reach an agreement within three months, the Commission was required to settle the matter pursuant to Article 52(3)(b) of the aforementioned Regulation.

(5) The opposing parties cited the legal uncertainty regarding the registration of ‘Focaccia di Recco col formaggio’ as a Protected Geographical Indication (PGI) under Regulation (EU) No 1151/2012, given that Italy, by Ministerial Decree of 18 July 2000, last

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2015/39. (See end of Document for details)*

amended on 5 June 2014, registered *Focaccia al formaggio di Recco* (a different name from that put forward for registration, although it refers to the same product) on its national list of traditional agri-food products. In addition to also existing under the name *Focaccia al formaggio di Recco*, the name 'Focaccia di Recco col formaggio' was not considered traditional given that it first appeared after the year 2000.

(6) Article 7(1)(a) of Regulation (EU) No 1151/2012 does not state that the name of a PGI must be traditional. A name may be registered as a PGI if it is used in trade or in common language, and only in the languages which are or were historically used to describe the specific product in the defined geographical area. Consequently, as it was demonstrated that the name 'Focaccia di Recco col formaggio' is used in trade and in common language, in the language of the defined geographical area, its registration as a PGI complies with Regulation (EU) No 1151/2012.

(7) The name *Focaccia al formaggio di Recco* may not be used for products which do not comply with the specification for the product registered under the name 'Focaccia di Recco col formaggio'.

(8) Furthermore, the opposing parties also cited Article 10(1)(c) of Regulation (EU) No 1151/2012 as grounds for opposition, i.e. registration of the name proposed would jeopardise the existence of products legally on the market for at least five years preceding the date of publication provided for in Article 50(2)(a) of the aforementioned Regulation. The opposing parties would be prevented from importing and marketing deep-frozen 'Focaccia di Recco col formaggio' given that pre-cooking, deep-freezing and other preservation techniques are prohibited according to the specification, as stated in point 3.6 of the Single Document.

(9) Nevertheless, the existence of the deep-frozen product bearing the name *Focaccia al formaggio di Recco* would be jeopardised solely on account of the specification for the proposed 'Focaccia di Recco col formaggio', which prohibits pre-cooking, deep-freezing and other preservation techniques. As the processes prohibited under the specification for the proposed name fall within the prerogatives of the applicant group and the content of the specification complies with Article 7(1) of Regulation (EU) No 1151/2012, the fact that existing products would allegedly be jeopardised cannot per se prevent the name from being registered.

(10) Furthermore, the Italian Government gave transitional national protection to the name 'Focaccia di Recco col formaggio' by Decree of 13 February 2012 of the Ministry of Agriculture, Food and Forestry Policies. In Italy, this name may only be used for a product made according to the specification included in the application to register the name 'Focaccia di Recco col formaggio' sent to the Commission. It would be nonsensical to attribute a transitional period to the opposing parties who import the product and who are established in Portugal and the United Kingdom. In any case, trademarks which were registered or acquired through use in good faith anywhere in the Union prior to the date the application for protection of the name 'Focaccia di Recco col formaggio' was submitted to the Commission, may continue to be used and renewed irrespective of the name being registered.

(11) The opposing parties also argued that the specification is in breach of food health standards as regards food preservation. They argue that by prohibiting pre-cooking, deep-freezing, freezing and other preservation techniques, the preservation of the product, and consequently food safety could be compromised. Furthermore, the specification is alleged to contain disproportionate and unlawful standards aiming to regulate the stages following production of the product, even to the extent of dictating how the product should be consumed after sale. In reality, the specification does not contain rules that are in breach of health standards. It is simply the case that if the prohibited preservation processes do have to be used, the product may no longer be sold under the registered name. The specification is in any case subordinate to general EU legislation. As regards the nature and objectives of the rules contained in the specification, they merely set out the characteristics that products under the name 'Focaccia di Recco col formaggio' must have when offered for consumption, which relate specifically to how the product bearing the name is produced and in no way affect how the product is consumed once it has been sold.

(12) The opposing parties also claim that prohibiting all forms of preservation unjustifiably restricts the free circulation of a legally-produced product through a rule that is in no way connected to the protection of that product. The product can in fact circulate, albeit not using the name if the product does not comply with the specification. This consequence is justified by the objective of Regulation (EU) No 1151/2012, namely to protect the names of registered geographical indications.

(13) In the light of the above, the name 'Focaccia di Recco col formaggio' should be entered in the register of protected designations of origin and protected geographical indications.

(14) 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 'Focaccia di Recco col formaggio' (PGI) is hereby entered in the register.

The name referred to in the first paragraph identifies a product in Class 2.3. Bread, pastry, cakes, confectionery, biscuits and other baker's wares in accordance with Annex XI to Commission Implementing Regulation (EU) No 668/2014[(3)].

Article 2

This Regulation shall enter into force on the twentieth day following that of 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.