DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2023/1633

of 10 August 2023

rejecting an application for protection of a geographical indication in accordance with Article 52(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council

('Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' (PGI))

(notified under document C(2023) 5372)

(Only the English text is authentic)

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(1) thereof,

Whereas:

(1) In accordance with Article 50 of Regulation (EU) No 1151/2012, the Commission has examined the application for registration of the names of 'Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' as protected geographical indication (PGI). The application refers to a beer produced in the city of Lida in Belarus and was submitted by the Joint-Stock Company 'Lidskoe Pivo' from Belarus on 21 July 2021 (PGI-BY-02789).

(2) Following the scrutiny, the Commission sent a letter requesting clarification of some of the aspects of the file. In particular, taking into account that water for the production of the 'Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' has to come from particular springs located on land owned by the applicant, and production of the product is carried out according to a 'separate unique technological instruction', (as stated in the initial product specification), the owner and the only user of which is the applicant, the applicant was asked to explain if the participation of other producers is possible in accordance with the principles of Geographical Indications scheme in the EU.

(3) Moreover, the Commission explained that a single natural or legal person may be treated as a group, when filing an application, where it is shown that both of the conditions of Article 49(1), second subparagraph of the Regulation (EU) No 1151/2012 are fulfilled: (a) the person concerned is the only producer willing to submit an application; and (b) with regard to protected geographical indications, the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas or the characteristics of the product are different from those produced in neighbouring areas. The applicant was asked to provide such justifications.

(4) In the reply the applicant provided an updated Single Document and product Specification, according to which the Joint-Stock Company 'Lidskoe Pivo' is the only owner and operator of the wells that must be used for production of 'Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' and that the entire production process is carried out on the territory of city of Lida by the applicant and according to a 'separate unique technological instruction', the owner and sole user of which is the applicant.

([1]) OJ L 343, 14.12.2012, p. 1.

(5) On the basis of the information provided, the Commission concluded that the application does not fulfil the requirements laid down in Regulation (EU) No 1151/2012 and informed in the rejection letter that, if no observations have been received within two months of receipt of the letter, it intends to launch the procedure for the adoption of a formal Commission decision rejecting the application pursuant to Article 52(1) of Regulation (EU) No 1151/2012.

(6) The Commission took into account that the system of GIs has been developed and designed in order to allow producers, of a certain area and whose product differentiates itself from any other product on the market due to the natural/social environment in which it has been produced, to protect their products.

(7) The Commission considered that the participation of other producers is clearly not possible in case of 'Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' where the applicant is the only owner and operator of the wells that must be used for production of the product in question.

(8) Moreover, the Commission took into account that the owner and sole user of the 'separate unique technological instruction', according to which the product is produced, is the applicant. Therefore, the product characteristics are not attributable to its geographical origin as required by Article 5(2) of Regulation (EU) No 1151/2012 but to special production method that is in the exclusive possession of the applicant.

(9) Further, Article 49(1) of Regulation (EU) No 1151/2012 provides that applications for the protection of GIs should be submitted by a group of producers, as a rule. Only where the additional conditions of Article 49(1), second subparagraph are fulfilled, may a single producer apply for such protection. The Commission noted that the applicant did not provide any justification in this regard.

(10) The applicant replied to the rejection letter sent by the Commission that the wells themselves do not determine the special composition of the water but that the water is unique due to the natural underground water sources located in the town of Lida. In the applicant's view there are no obstacles for any other producer to drive a new well or acquire rights to any existing well.

(11) The applicant explained that the ties between the product and the geographical area are shown in the provided documentation and that using a special production technology does not contradict the requirements.

(12) The applicant informed that the Joint-Stock Company 'Lidskoe Pivo' appears to be the only producer willing to submit the application and that the water provided by the natural sources in the town of Lida have unique characteristics that contribute largely to the product authenticity.

(13) The applicant did not provide any comments regarding 'separate unique technological instruction' but replaced the statement by reference to 'water treatment'.

(14) The Commission took into account the clarifications provided by the applicant and concludes that the application in question does not allow participation of other possible producers.

(15) According to the updated Single Document 'the applicant is the owner and operator of two wells that are fed from the underground aquifer located in the town of Lida. The water for production of "Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva" is coming exclusively from this source'. Therefore, the operators willing to adhere to the rules of production of the beer in question would face obstacles that are not objectively justified since the wells are owned by the applicant and located on land it owns.

(16) Moreover, according to the updated product Specification 'packing and production of "Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva" is carried out by Joint-Stock Company "Lidskoe Pivo" itself' confirming that, contrary to the principles of Geographical Indications scheme in the EU, the participation of other producers is not possible.

(17) Furthermore, the production technics are described in a general way, without providing any details that would allow participation of other potential producers.

(18) Protected geographical indications confer, unlike individual trademarks, collective rights and contrary to trade marks owned by clearly identifiable holders, GIs are deemed to be owned by a collective abstract community, that comprises all producers, -current or potential-, abiding to the related specification. This means that any producer who respects the requirements of the product specification may use the protected designation.

(19) In the light of the above the Commission considers that the application for registration 'Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' as PGI does not fulfil the requirements of the Regulation (EU) No 1151/2012, namely Article 5(2) and Article 49(1) of the said Regulation.

(20) The application for protection of the names 'Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' should therefore be rejected.

(21) The measures provided for in this Decision are in accordance with the opinion of the Agricultural Product Quality Policy Committee,

HAS ADOPTED THIS DECISION:

Article 1

The application for registration of the name 'Лидское пиво/Lidskoe pivo/Лідскае піва/Lidskae piva' is rejected.

Article 2

This Decision is addressed to the legal representative of the applicant:

EUROMARKPAT GERMANY
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European Patent, Trademark and Design Attorneys
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81541 München
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Done at Brussels, 10 August 2023.

For the Commission
Janusz WOJCIECHOWSKI
Member of the Commission