Reports of Cases

ORDER OF THE PRESIDENT OF THE GENERAL COURT

24 April 2015 *

(Application for interim measures — Registration of a protected geographical indication — 'Piadina Romagnola/Piada Romagnola' — Application for suspension of operation of a measure — No urgency)

In Case T-43/15 R,

CRM Srl, established in Modena (Italy), represented by G. Forte, C. Marinuzzi and A. Franchi, lawyers,

applicant,

v

European Commission, represented by D. Bianchi and J. Guillem Carrau, acting as Agents,

defendant,

application for suspension of the operation of Commission Implementing Regulation (EU) No 1174/2014 of 24 October 2014 entering a name in the register of protected designations of origin and protected geographical indications (Piadina Romagnola/Piada Romagnola (PGI)) (OJ 2014 L 316, p. 3),

THE PRESIDENT OF THE GENERAL COURT

makes the following

Order [1]

Background to the dispute

1 The applicant, CRM Srl, is an Italian company which has since 1974 been engaged in the production of bread products, including a number of types of piadine romagnole. This is an Italian culinary speciality consisting of a thin sheet of wheat flour dough, lard or olive oil, salt and water, traditionally baked on a terracotta plate or on a metal or stone griddle. The dough base is folded and may be stuffed with sweet or savoury ingredients. The applicant describes itself as a leading company in the food production sector, and known as being the biggest piadine producer in Italy. It markets its products under its own brand or under brands of other distributors and its clients include Italy's major retail groups.

* Language of the case: Italian.

1 — Only the paragraphs of the present order which the Court considers it appropriate to publish are reproduced here.

2 The applicant fears that Commission Implementing Regulation (EU) No 1174/2014 entering a name in the register of protected designations of origin and protected geographical indications (Piadina Romagnola/Piada Romagnola (PGI)) (OJ 2014 L 316, p. 3; 'the contested regulation') will, in so far as it restricts the use of the designation 'romagnole' to piadine/piade produced within the protected geographical area, make it impossible for the applicant to carry out its normal economic activity, as its production site is located outside that area.

3 There are two phases in the procedure for the registration of a protected geographical indication ('PGI'), and it is governed, so far as the relevant period in the present case is concerned, by 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 (OJ 2006 L 93, p. 12) and by 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 (OJ 2012 L 343, p. 1). The first phase concerns specifically the Member State in which the food product in question originates. That State initiates the procedure by means of a registration application and the preparation of the necessary documentation establishing the link between the product concerned and the protected area. This is followed by a second phase, carried out by the European Commission, in which the application criteria are checked and verified. This involves an examination of the registration application and its publication, for the purpose of any potential objection procedure. The administrative procedure is concluded by the publication of the PGI in the *Official Journal of the European Union* or by the refusal to proceed to such publication.

4 Pursuant to Regulation No 510/2006, the application for registration of the PGI 'piadina romagnola/piada romagnola' ('piadina romagnola') was submitted to the Italian authorities in 2011 by a group promoting that product. After having organised a public meeting with a view to verifying that the proposed specification was in accordance with the authentic methods of obtaining the product concerned, the Italian authorities published the registration proposal in the *Gazzetta ufficiale della Repubblica italiana* (GURI, official journal of the Italian Republic) of 28 January 2012.

5 That publication elicited a number of objections from organisations representing small-scale producers of piadine sold in street-side outlets. These organisations disputed the fact that, for the purposes of the envisaged PGI, industrially-produced piadine were being treated as equivalent to piadine produced on a small-scale basis and sold in street-side outlets. However, on 11 December 2012 the Italian authorities lodged with the Commission the application for registration of the PGI in question together with the product specification.

6 By application of 29 March 2013 the applicant instituted proceedings before the Tribunale amministrativo regionale del Lazio (Regional Administrative Court of Lazio, 'TAR') seeking cancellation of the Italian documents in the registration procedure, in particular the piadina romagnola product specification, on the ground that Regulation No 510/2006 had been infringed, given the absence of a link, on the one hand, between the protected area and the industrial product piadina romagnola and, on the other hand, between that industrial product and the product prepared on a small-scale basis. In the course of the proceedings before the TAR, the Italian authorities replaced the product specification with a new version of that document.

[omissis]

8 By judgment of 15 May 2014, the TAR upheld the action brought by the applicant, annulling, inter alia, the product specification and requiring the Italian authorities to redraft it. In the view of the TAR, only small-scale production merited protection, thereby excluding all industrial production of the foodstuff in question. In accordance with the Italian law in force, that judgment had immediate effect.

9 Some days after the delivery of that judgment, on 21 May 2014, the Commission, pursuant to Article 50(2)(a) of Regulation No 1151/2012, published the application for registration of the PGI at issue (OJ 2014 C 153, p. 9), stating that that publication conferred a right to oppose the application pursuant to Article 51 of that regulation. By e-mail of 22 May 2014 the applicant informed the Commission that, by its judgment of 15 May 2014, the TAR had annulled the product specification submitted by the Italian authorities, with the result that those authorities were required to redraft the specification by limiting the scope of the PGI at issue to piadina romagnola produced on a small-scale basis. Consequently, according to the applicant, the publication of the application on 21 May 2014 had to be annulled. On 10 June 2014, in response to that e-mail, the Commission stated that the registration application had been published for the purpose of potential objections and that any implications of the Italian court's decision had to be assessed by the relevant Italian authorities.

10 In a subsequent exchange of e-mails between the applicant, the Commission and the Italian authorities, dealing with, inter alia, the consequences of the TAR's judgment of 15 May 2014 for the procedure governing registration of the PGI in question, those authorities confirmed that they were willing to continue with that procedure, stating that they had brought an appeal before the Consiglio di Stato (Italian Council of State) against the TAR's judgment and had submitted an application for suspension of its operation. In the course of the appeal proceedings, the Consiglio di Stato reserved its decision on the question of suspension of the operation of the TAR's judgment and stated that it was not upholding the applicant's request that a question on the matter be referred to the Court of Justice for a preliminary ruling.

11 It was in those circumstances that the Commission adopted the contested regulation on 24 October 2014, with the consequence that the applicant is no longer authorised to use the designation 'piadine romagnole' for its products made in Modena (Italy), since that city is located outside the protected geographical area. The contested regulation was published in the *Official Journal of the European Union* on 4 November 2014.

Procedure and forms of order sought *[omissis]*

13 By a separate document, lodged at the Court Registry on 20 February 2015, the applicant brought the present application for interim measures, in which it claims, essentially, that the President of the General Court should:

— suspend the operation of the contested regulation, pursuant to the second subparagraph of Article 105(2) of the Rules of Procedure of the General Court, until the conclusion of the present interim proceedings and, in any event, until the Court has given judgment in the main proceedings.

[omissis]

Law *[omissis]*

21 The applicant submits that it would suffer serious and irreparable harm if the present application for interim measures were not to be upheld. Because of the enforceable nature of the contested regulation, it would be prohibited from producing and distributing piadine under the designation 'romagnole.' The applicant contends that the resultant harm would not be exclusively pecuniary, as the contested regulation would also adversely affect its image and the right of its name to protection, in addition to its prospects of entering into contracts, which would be reflected by an irremediable loss of clients and market shares. According to the applicant, this loss would correspond to around 40% of its turnover.

[omissis]

29 It is well-established case-law that, when suspension of the operation of a European Union act is sought, the grant of the interim measure requested is justified only where the act at issue constitutes the decisive cause of the alleged serious and irreparable harm (see order of 7 March 2013 in *EDF* v *Commission*, C-551/12 P(R), ECR, EU:C:2013:157, paragraph 41 and case-law cited). In this context, it has been held that that harm must result solely from the effects produced by the act at issue and not from a lack of diligence on the part of the party which has sought the interim measures (order of 15 July 2008 in *CLL Centres de langues* v *Commission*, T-202/08 R, EU:T:2008:293, paragraph 73; see also, to that effect, orders of 28 May 1975 in *Könecke* v *Commission*, 44/75 R, ECR, EU:C:1975:72, paragraph 3, and of 22 April 1994 in *Commission* v *Belgium*, C-87/94 R, ECR, EU:C:1994:166, paragraphs 38 and 42). According to that same case-law, if it has not demonstrated the full level of diligence that ought to be demonstrated by a prudent and well-informed undertaking, the party seeking interim measures must bear even harm which it claims is liable to jeopardise its existence or to alter irrevocably its position on the market (see, to that effect, order of 1 February 2001 in *Free Trade Foods* v *Commission*, T-350/00 R, ECR, EU:T:2001:37, paragraphs 50, 51 and 59, and order in *CLL Centres de langues* v *Commission*, cited above, paragraph 74).

30 In the present case, it is clear from the case-file that the alleged occurrence of serious and irreparable harm, both financial and moral, rests on the premise that the contested regulation prohibits the applicant from using the designation 'romagnole' for the sale of its piadine, thereby placing it at a disadvantage in comparison with its competitors, which, being established within the geographical area protected by that regulation, can continue to use that designation for marketing their own piadine.

31 In the present case, however, it must be concluded that the applicant has not demonstrated the reasonable diligence to be expected of a prudent and well-informed trader. It refrained from availing of the opportunity, none the less provided for in the applicable rules, to obtain permission to continue to market its piadine under the designation 'romagnole' during a transitional period.

32 In this regard, as was made clear in the TAR's judgment of 15 May 2014 (see paragraph 8 above), and repeatedly relied on by the applicant, it must be recalled that the national procedure for the registration of the PGI at issue was initiated before the Italian authorities in 2011 and concluded by them on 11 December 2012 when they sent the file to the Commission (see paragraphs 4 and 5 above). This national procedure was governed, *ratione temporis*, by Regulation No 510/2006. In accordance with Article 5(5) and (6) thereof, the Italian Republic was required to initiate an objection procedure (which indeed took place), in which any person having a legitimate interest could lodge an objection to the registration application. The Italian Republic would have been authorised to grant, on a transitional basis and at national level, protection to the applicant's use of the designation 'romagnole' and a corresponding adaptation period on condition that the applicant, having lawfully marketed its piadine under that designation over the course of the previous five years, had 'raised that point in the national objection procedure.'

33 The TAR, however, expressly held in its judgment of 15 May 2014 that the applicant, unlike other traders, had not participated in the national objection procedure and that that omission removed any possibility of granting it a period of adaptation, given that it had not set out its particular requirements within the context of the procedure laid down for that purpose. Consequently, the applicant, which, claiming to have produced all sorts of piadine romagnole for several decades, would clearly have fulfilled the conditions of Article 5(5) and (6) of Regulation No 510/2006, had allowed to slip away the chance of avoiding, by its own means, the occurrence of the harm which it feared it would incur. After the file in question had been brought before the Commission, the procedure carried out by the Commission was governed, *ratione temporis*, by Regulation No 1151/2012, which entered into force on 3 January 2013. In the context of its contacts with the Commission, the applicant would have been able to ask it, in accordance with the combined provisions of Article 15(1)

and (2) and Article 49(3) of that regulation, to grant a transitional period of up to 15 years, in order for it to benefit from a *de facto* prolongation of the adaption period granted by the Italian authorities during the national objection procedure. However, having refrained from participating in that national objection procedure, the applicant failed to avail of the opportunity to be able to continue to market its piadine under the designation 'romagnole.' Moreover, even if participation in the national procedure were not a necessary prerequisite for the Commission to grant transitional protection, it must be stated that it is not, in any event, apparent from the case-file that the applicant submitted any such request to the Commission or that such a request was turned down.

34 It follows that, having failed to demonstrate all of the diligence that a prudent and well-informed undertaking ought to have shown, the applicant must itself bear the harm, both pecuniary and non-pecuniary, that it fears it will incur in the present case.

[omissis]

44 It must be added that, in the application for interim measures, the applicant itself referred to the existence of a subsidiary, namely the company Commerciale Europa, which it controlled through its financing company Finrec and which therefore belonged 'to the same group.' The judge dealing with the application for interim measures can only conclude from this that the applicant is a member of a group of companies. In those circumstances, if the applicant intended validly to invoke the risk of serious and irreparable financial loss, the onus was on it to state the size, overall turnover and characteristics of the group to which it belongs.

45 The assessment of the applicant's precise financial situation depends on whether it objectively has access to additional funds derived from, inter alia, the financial resources of the group to which it belongs. The conditions governing the applicant's membership of its group therefore constitute essential elements for the purpose of assessing the urgency of the present application for interim measures (see to that effect, order of 10 June 2010 in *Stahlwerk Bous* v *Commission*, T-172/14 R, EU:T:2014:558, paragraph 21). However, the applicant has not, in its application for interim measures, mentioned either the financial capacity of its group or the structure of its capital or shareholders, although information in this regard would have been necessary, particularly as it is clear from online sources that a company called Finrec SpA, established in Modena at the same address as that of the applicant, does in fact appear to exist and to operate on the market.

[omissis]

47 Without any valid point of comparison, the judge dealing with the application for interim measure is thus unable to determine whether the alleged 40% fall in turnover would be liable to threaten the applicant's financial sustainability or to lead to a significant loss of its market share in comparison with the financial strength of the group of companies to which it belongs.

[omissis]

51 In any event, although the applicant may encounter certain difficulties in accurately quantifying its financial loss, it does not explain why it is not possible for it to identify, detail and demonstrate with supporting documentation the turnover which it has achieved, during an appropriate reference period, through sales of piadine romagnole and compare that turnover with the overall turnover achieved by the group of companies to which it belongs during that same period for all products and economic activities, in order to determine the percentage reflecting the harm which it would sustain if it were to lose entirely the market concerned.

52 Furthermore, in any future compensation dispute, the Court would be entitled to calculate the loss caused to the applicant by means of an abstract assessment based on the likely developments of its market shares and profits in the normal course of events (see, to that effect, order of 5 June 2013 in

Rubinum v *Commission*, T-201/13 R, EU:T:2013:296, paragraph 50). With regard to the quantification of loss, the Court's appraisal of the facts is not open to appeal and it has a margin of appreciation as to the method to be adopted to determine the extent of any reparation (see, to that effect, judgment of 21 February 2008 in *Commission* v *Girardot*, C-348/06 P, ECR, EU:C:2008:107, paragraphs 72, 74 and 76). In the present case the Court could even rely on estimates based on mean statistical values, it being understood that the applicant must prove the data on which those estimates are based (see, to that effect, judgment of 28 April 2010 in *BST* v *Commission*, T-452/05, ECR, EU:T:2010:167, paragraph 168 and the case-law cited).

[omissis]

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

1. The application for interim measures is dismissed.

2. The costs are reserved.

Luxembourg, 24 April 2015.

[Signatures]