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JUDGMENT OF THE COURT (Grand Chamber)

26 February 2008 (*)

(Failure of a Member State to fulfil obligations – Regulation (EEC) No 2081/92 – Protection of geographical indications and designations of origin for agricultural products and foodstuffs – ‘Parmigiano Reggiano’ cheese – Use of the name ‘Parmesan’ – Obligation on a Member State to proceed on its own initiative against the abuse of a protected designation of origin)

In Case C-132/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 21 March 2005,

Commission of the European Communities, represented by E. de March, S. Grünheid and B. Martenczuk, acting as Agents, with an address for service in Luxembourg,

applicant,

supported by:

Czech Republic, represented by T. Boček, acting as Agent,

Italian Republic, represented by I.M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato, with an address for service in Luxembourg,

interveners,

v

Federal Republic of Germany, represented by M. Lumma and A. Dittrich, acting as Agents, assisted by M. Loschelder, Rechtsanwalt,

defendant,

supported by:

Kingdom of Denmark, represented by J. Molde, acting as Agent, with an address for service in Luxembourg,

Republic of Austria, represented by E. Riedl, acting as Agent, with an address for service in Luxembourg,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, C.W.A. Timmermans, A. Rosas, K. Lenaerts and U. Löhmus, Presidents of Chambers, J.N. Cunha Rodrigues (Rapporteur), K. Schieman, P. Küris, E. Juhász, E. Levits and A. Ó Caoimh, Judges,

Advocate General: J. Mazák,

Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 13 February 2007,

after hearing the Opinion of the Advocate General at the sitting on 28 June 2007,

gives the following

Judgment

- 1 By its application, the Commission requests the Court to declare that, by formally refusing to proceed against the use, on its territory, of the name 'Parmesan' on the labelling of products which do not comply with the requirements of the specification for the protected designation of origin (PDO) 'Parmigiano Reggiano', thereby favouring the appropriation of the reputation of the genuine, Community-wide protected product, the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1).

Legal framework

- 2 Regulation No 2081/92 establishes Community protection of designations of origin and of geographical indications for agricultural products and foodstuffs.
- 3 Article 2 of Regulation No 2081/92 provides:

'1. Community protection of designations of origin and of geographical indications of agricultural products and foodstuffs shall be obtained in accordance with this Regulation.

2. For the purposes of this Regulation:

(a) designation of origin: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

- originating in that region, specific place or country, and
- the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

...'

- 4 Article 3(1) of the regulation is worded as follows:

'Names that have become generic may not be registered.

For the purposes of this Regulation, a "name that has become generic" means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff.

To establish whether or not a name has become generic, account shall be taken of all factors, in particular:

- the existing situation in the Member State in which the name originates and in areas of consumption,

- the existing situation in other Member States,
 - the relevant national or Community laws.
- ...'

5 According to Article 4(2)(g) of Regulation No 2081/92, the product specification shall include at least 'details of the inspection structures provided for in Article 10'.

6 Article 5(3) and (4) of the regulation states:

- '3. The application for registration shall include the product specification referred to in Article 4.
- 4. The application shall be sent to the Member State in which the geographical area is located.'

7 Article 10 of the regulation provides:

'1. Member States shall ensure that not later than six months after the entry into force of this Regulation inspection structures are in place, the function of which shall be to ensure that agricultural products and foodstuffs bearing a protected name meet the requirements laid down in the specifications.

2. An inspection structure may comprise one or more designated inspection authorities and/or private bodies approved for that purpose by the Member State. Member States shall send the Commission lists of the authorities and/or bodies approved and their respective powers. The Commission shall publish those particulars in the *Official Journal of the European Communities*.

3. Designated inspection authorities and/or approved private bodies must offer adequate guarantees of objectivity and impartiality with regard to all producers or processors subject to their control and have permanently at their disposal the qualified staff and resources necessary to carry out inspection of agricultural products and foodstuffs bearing a protected name.

If an inspection structure uses the services of another body for some inspections, that body must offer the same guarantees. In that event the designated inspection authorities and/or approved private bodies shall, however, continue to be responsible vis-à-vis the Member State for all inspections.

As from 1 January 1998, in order to be approved by the Member States for the purpose of this Regulation, private bodies must fulfil the requirements laid down in standard EN 45011 of 26 June 1989.

4. If a designated inspection authority and/or private body in a Member State establishes that an agricultural product or a foodstuff bearing a protected name of origin in that Member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that this Regulation is complied with. ...

5. A Member State must withdraw approval from an inspection body where the criteria referred to in paragraphs 2 and 3 are no longer fulfilled. It shall inform the Commission, which shall publish in the *Official Journal of the European Communities* a revised list of approved bodies.

6. The Member States shall adopt the measures necessary to ensure that a producer who complies with this Regulation has access to the inspection system.

7. The costs of inspections provided for under this Regulation shall be borne by the producers using the protected name.'

8 Under Article 13 of the regulation:

- '1. Registered names shall be protected against:

...

- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;

...

Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to (a) or (b) in the first subparagraph.

...

3. Protected names may not become generic.'

- 9 According to Article 2 of Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation No 2081/92 (OJ 1996 L 148, p. 1) and to Part A of the annex thereto, 'Parmigiano Reggiano' is to be a PDO with effect from 21 June 1996.

Pre-litigation procedure

- 10 Following a complaint filed by several economic operators, the Commission requested the German authorities, by letter of 15 April 2003, to give clear instructions to the government bodies responsible for the combating of fraud to bring to an end the marketing on German territory of products designated as 'Parmesan' which did not comply with the specification for the PDO 'Parmigiano Reggiano'. Since the term 'Parmesan', according to the Commission, was a translation of the PDO 'Parmigiano Reggiano', its use constituted a breach of Article 13(1)(b) of the regulation.
- 11 The German Government replied by letter of 13 May 2003 that, although the term 'Parmesan' had historical roots in the region of Parma, it had become a generic name for hard cheeses of diverse origins, grated or intended to be grated, distinct from the PDO 'Parmigiano Reggiano'. For that reason, its use did not infringe Regulation No 2081/92.
- 12 On 17 October 2003, the Commission sent the Federal Republic of Germany a letter of formal notice, to which it replied by letter of 17 December 2003.
- 13 Not being satisfied by the explanations rendered by the Federal Republic of Germany, on 30 March 2004, the Commission issued a reasoned opinion inviting it to take the measures necessary to comply with the opinion within two months of its notification.
- 14 By letter of 15 June 2004, the Federal Republic of Germany informed the Commission that it adhered to its previous position.
- 15 In those circumstances, the Commission decided to bring the present action.

The action

- 16 By order of the President of the Court of 6 September 2005, the Italian Republic on the one hand, and the Kingdom of Denmark and the Republic of Austria, on the other hand, were given leave to intervene in support of the forms of order sought by the Commission and by the Federal Republic of Germany respectively.
- 17 By order of the President of the Court of 15 May 2006, the Czech Republic was given leave to intervene in support of the form of order sought by the Commission.

- 18 In support of its action, the Commission relies on a single ground of complaint relating to the Federal Republic of Germany's failure to proceed against the use, on its territory, of the name 'Parmesan' on the labelling of products which do not comply with the requirements of the specification for the PDO 'Parmigiano Reggiano'.
- 19 The Federal Republic of Germany denies the failure to fulfil obligations on three grounds:
- first, a designation of origin is protected under Article 13 of Regulation No 2081/92 only in the exact form in which it is registered;
 - second, the use of the word 'Parmesan' does not infringe the protection of the designation of origin 'Parmigiano Reggiano', and
 - third, it is not bound to proceed on its own motion against infringements of Article 13 of the Regulation.

Protection of compound designations

- 20 The Commission claims that the system of Community protection is underpinned by the principle that the registration of a designation containing several terms confers the protection of Community law both on the constituent elements of the compound designation and on the designation as a whole. The effective protection of compound designations therefore implies that, in principle, all the constituent elements of a compound designation are protected against abuse. The Commission is of the opinion that, in order to guarantee such protection, Regulation No 2081/92 does not require registration of every element of a compound designation intended to be protected, but assumes that each element enjoys intrinsic protection. That interpretation was confirmed by the Court in Joined Cases C-129/97 and C-130/97 *Chiciak and Fol* [1998] ECR I-3315.
- 21 The Commission argues that the principle of the protection of all the constituent elements of a compound designation is subject to only one exception, provided for in the second indent of Article 13 (1) of Regulation No 2081/92, whereby the use of a single element of a compound designation is not regarded as an infringement of Article 13(1)(a) and (b) of the regulation if the element concerned is the name of an agricultural product or of a foodstuff which is considered to be generic. That provision would be superfluous if the various constituent elements of designations registered exclusively in the form of compound designations were to be considered as not enjoying any protection.
- 22 Furthermore, a single constituent element of a compound designation does not enjoy the protection of Regulation No 2081/92 if the Member States concerned indicated, when notifying the compound designation at issue, that protection was not requested for certain parts of that designation.
- 23 The Commission took that into account when it adopted Regulation No 1107/96, by declaring as appropriate in a footnote that protection of part of the designation concerned was not requested.
- 24 In the case of the designation 'Parmigiano Reggiano', no footnote was inserted in relation to either of those constituent elements.
- 25 The Federal Republic of Germany replies that a PDO enjoys the protection of Article 13 of Regulation No 2081/92 only in the exact form in which it is registered. The opposite contention cannot be inferred from the Court's judgment in *Chiciak and Fol*, notwithstanding the Commission's argument to that effect.
- 26 Furthermore, according to the Federal Republic of Germany, in the context of Case C-66/00 *Bigi* [2002] ECR I-5917, the Italian Republic itself expressly confirmed that it had purposely not registered the designation 'Parmigiano'. In those circumstances, in the absence of registration, the designation 'Parmigiano' is not protected by Community law.
- 27 In that regard, the eighth recital in the preamble to Regulation No 1107/96 states that 'certain Member States have made it known that protection was not requested for some parts of designations and this

should be taken into account’.

- 28 References in Regulation No 1107/96 to footnotes contained in its annex specify the cases in which protection of part of the designation concerned was not requested.
- 29 It must however be pointed out that the lack of a declaration that, for certain elements of a designation, the protection conferred by Article 13 of Regulation No 2081/92 was not requested, cannot constitute a sufficient basis for determining the scope of that protection (see, to that effect, *Chiciak and Fol*, paragraph 37).
- 30 Under the system of protection created by Regulation No 2081/92, questions concerning the protection to be accorded to the various constituent parts of a name, in particular the question whether a generic name or a constituent part protected against the practices referred to in Article 13 of that regulation may be concerned, are matters which fall for determination by the national court on the basis of a detailed analysis of the facts presented before it by the parties concerned (*Chiciak and Fol*, paragraph 38).
- 31 In those circumstances, the Federal Republic of Germany’s argument that a PDO enjoys protection under Article 13 of Regulation No 2081/92 only in the exact form in which it is registered cannot succeed.

Infringement of the PDO ‘Parmigiano Reggiano’

- 32 According to the Commission, the marketing under the name ‘Parmesan’ of cheese which does not comply with the specification for the PDO ‘Parmigiano Reggiano’ constitutes an infringement of Article 13(1)(b) of Regulation No 2081/92, since the term ‘Parmesan’ is the correct translation of the PDO ‘Parmigiano Reggiano’. The translation, like the PDO in the language of the Member State which obtained registration of that designation, is exclusively reserved for products which comply with the specification.
- 33 The Commission adds that, as shown by the close connection which evolved historically between the specific geographic region of Italy where that type of cheese comes from and the term ‘Parmesan’, the term is not a generic name which can be distinguished from the PDO ‘Parmigiano Reggiano’.
- 34 In any case, use of the name ‘Parmesan’ for a cheese which does not comply with the specification for the PDO ‘Parmigiano Reggiano’ constitutes an evocation of that PDO, which is prohibited by Article 13 (1)(b) of Regulation No 2081/92.
- 35 The Commission also submits that the term ‘Parmesan’ has not become a generic name.
- 36 Of course, a geographical designation could, over time and through use, become a generic name in the sense that consumers cease to regard it as an indication of the geographical origin of the product, and come to regard it only as an indication of a certain type of product. That shift in meaning occurred for instance in the case of the designations ‘Camembert’ and ‘Brie’.
- 37 Nevertheless, it is the Commission’s view that the term ‘Parmesan’ has never lost its geographical connotation. Were ‘Parmesan’ really a neutral term without such a connotation, there would be no plausible explanation for the persistent efforts of manufacturers of imitations to establish through words or images a link between their products and Italy.
- 38 Moreover, according to the Commission, the fact that up until the year 2000 a cheese called ‘Parmesan’, which did not comply with the specification for the PDO ‘Parmigiano Reggiano’, was produced on Italian territory does not indicate that the term ‘Parmesan’ is the generic name in Italy for hard cheeses of diverse origin, because the cheese in question was exclusively intended for export to countries where the term ‘Parmesan’ did not enjoy any particular protection, in accordance with the principle of territoriality. Moreover, it is only since 21 June 1996, the date when Regulation No 1107/96 entered into force, that the name ‘Parmigiano Reggiano’ has been protected at Community level.

- 39 The Federal Republic of Germany contends that the use of the word 'Parmesan' does not infringe Article 13(1)(b) of Regulation No 2081/92, given that it is only a translation, in the opinion of the Commission, of the term 'Parmigiano', which, as illustrated by the situation in Italy and in other Member States and equally by national and Community legislation, is a generic name. As a generic name, it cannot be protected under the regulation.
- 40 In the alternative, the German Government submits that, even if the term 'Parmigiano' is not a generic name, to which therefore the provisions of the second indent of Article 13(1) of Regulation No 2081/92 do not apply, use of the term 'Parmesan' does not infringe the provisions concerning the protection of the designation of origin 'Parmigiano Reggiano'. The name 'Parmesan' has evolved, over centuries, in a particular way and has become, in Germany, but also in other Member States, a generic name. Its use does not therefore constitute a misuse or evocation of the PDO 'Parmigiano Reggiano'.
- 41 To substantiate that contention, the Federal Republic of Germany refers, first, to point 35 of the Opinion of Advocate General Ruiz-Jarabo Colomer in Case C-317/95 *Canadane Cheese Trading and Kouri* [1997] ECR I-4681, second, to *Bigi*, in which the Court expressly left open the question whether the term 'Parmesan' is a generic designation, and third, to the fact that it is not sufficient to find that the name of a product is the translation of a designation of origin. It is necessary to examine in each particular case whether that translation really amounts to an evocation of the designation at issue. That is not the case where the name at issue, while originally a translation, has, with the passage of time, taken on another meaning in the ordinary usage of consumers, thus becoming a generic name. Fourth, the Federal Republic of Germany relies on the fact that in Germany – the only Member State in which the generic quality of the term 'Parmesan' is decisive given the present infringement proceedings – the word 'Parmesan' has always been understood as the generic name of a hard cheese grated or intended to be grated. Moreover, that is also the situation in other Member States, including Italy.
- 42 It is necessary, first, to establish whether use of the name 'Parmesan' corresponds, with regard to the PDO 'Parmigiano Reggiano', to one of the situations referred to in Article 13(1) of Regulation No 2081/92.
- 43 In that regard, it should be pointed out that, under Article 13(1)(b) of that regulation, registered names are protected against any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated.
- 44 With regard to the evocation of a PDO, the Court has held that that term covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image brought to his mind is that of the product whose designation is protected (Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraph 25).
- 45 The Court has pointed out that it is possible for a PDO to be evoked where there is no likelihood of confusion between the products concerned and even where no Community protection extends to the parts of that designation which are echoed in the term or terms at issue (*Consorzio per la tutela del formaggio Gorgonzola*, paragraph 26).
- 46 In the present case, there is phonetic and visual similarity between the names 'Parmesan' and 'Parmigiano Reggiano', and that in a situation where the products at issue are hard cheeses, grated or intended to be grated, namely, where they have a similar appearance (see, to that effect, *Consorzio per la tutela del formaggio Gorgonzola*, paragraph 27).
- 47 In addition, regardless whether the name 'Parmesan' is or is not an exact translation of the PDO 'Parmigiano Reggiano' or of the term 'Parmigiano', the conceptual proximity between those two terms emanating from different languages, which was revealed in discussions before the Court, must also be taken into account.
- 48 That proximity and the phonetic and visual similarities referred to in paragraph 46 above are such as to bring to the mind of the consumer the cheese protected by the PDO 'Parmigiano Reggiano', when he is confronted by a hard cheese, grated or intended to be grated, bearing the name 'Parmesan'.

- 49 In those circumstances, the use of the name 'Parmesan' must be regarded, in the sense of Article 13(1)(b) of Regulation No 2081/92, as an evocation of the PDO 'Parmigiano Reggiano'.
- 50 The question whether the name 'Parmesan' is a translation of the PDO 'Parmigiano Reggiano' is therefore of no relevance for the assessment of the present action.
- 51 The Federal Republic of Germany nevertheless submits that, since the name 'Parmesan' has become a generic name, its use cannot amount to an unlawful evocation of the PDO 'Parmigiano Reggiano'.
- 52 It is for the Federal Republic of Germany to prove that argument to be well founded, all the more so because the Court has already held that it is far from clear that the designation 'Parmesan' has become generic (*Bigi*, paragraph 20).
- 53 When assessing the generic character of a name, the Court has held that it is necessary, under Article 3(1) of Regulation 2081/92, to take into account the places of production of the product concerned both inside and outside the Member State which obtained the registration of the name at issue, the consumption of that product and how it is perceived by consumers inside and outside that Member State, the existence of national legislation specifically relating to that product, and the way in which the name has been used in Community law (see Joined Cases C-465/02 and C-466/02 *Germany and Denmark v Commission* [2005] ECR I-9115, paragraphs 76 to 99).
- 54 As indicated by the Advocate General in points 63 and 64 of his Opinion, the Federal Republic of Germany restricted itself to providing quotations from dictionaries and specialist literature which do not provide any comprehensive view of how the word 'Parmesan' is perceived by consumers in Germany and other Member States, and failed even to give any figures as to the production or consumption of the cheese marketed under the name 'Parmesan' in Germany or in other Member States.
- 55 According to the documents in the case, in Germany, certain producers of cheese called 'Parmesan' market that product with labels referring to Italian cultural traditions and landscapes. It is legitimate to infer from this that consumers in that Member State perceive 'Parmesan' cheese as a cheese associated with Italy, even if in reality it was produced in another Member State (see to that effect *Germany and Denmark v Commission*, paragraph 87).
- 56 Finally, at the hearing, the Federal Republic of Germany was also unable to provide information on the quantity of cheese produced in Italy under the PDO 'Parmigiano Reggiano' and imported into Germany, making it impossible for the Court to use the factors relating to the consumption of that cheese as indicators of the generic character of the name 'Parmesan' (see, to that effect, *Germany and Denmark v Commission*, paragraph 88).
- 57 Since the Federal Republic of Germany has therefore failed to show that the name 'Parmesan' has become generic, use of the word 'Parmesan' for cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' must be regarded for the purposes of the present proceedings as infringing the protection provided for that PDO under Article 13(1)(b) of Regulation No 2081/92.

Obligation on the Federal Republic of Germany to proceed against infringements of Article 13(1) of Regulation No 2081/92

- 58 The Commission contends that the Federal Republic of Germany is bound, under Articles 10 and 13 of Regulation No 2081/92, to take on its own initiative the measures necessary to deal with conduct which infringes a PDO. According to the Commission, Member State intervention should include administrative and penal measures such as to enable the objectives referred to in that regulation concerning the protection of designations of origin to be achieved. Products which do not comply with the requirements of the regulation cannot be marketed.
- 59 The Commission points out that its complaints are directed not at the German legislation or at any lack of a right of action before the national courts, but at the administrative practice of the German authorities which is contrary to Community law. If the Member States were exempted from their obligation to intervene and if, as a consequence, economic operators themselves had to bring legal proceedings each time their exclusive right to use the PDO at issue throughout the territory of the

European Union were infringed, the objectives of Regulation No 2081/92 could not be achieved.

- 60 Again from the point of view of the Commission, the central question in legal proceedings between private economic operators is that of compliance with the intellectual property rights enjoyed by the producers established in the region of origin of the product concerned, whereas the purpose of action by the public authorities against infringements of Article 13 of Regulation No 2081/92 is not to protect private economic interests but those of consumers, whose expectations as to the quality and geographic origin of that product should not be disappointed. The protection of consumers intended by the regulation would be compromised if the enforcement of the prohibitions laid down by the regulation were completely dependent on the taking of legal action by private economic operators.
- 61 The Commission concludes that the Federal Republic of Germany's conduct must be treated as an infringement of Community law by omission.
- 62 For its part, the Federal Republic of Germany submits that Article 13 of Regulation No 2081/92 determines the scope of protection of registered geographical indications and designations of origin. Owing to the direct applicability of the regulation, that article confers rights on holders or legitimate users of the PDO which the national courts must protect.
- 63 The direct applicability of Regulation No 2081/92 admittedly does not release the Member States from the obligation to take national measures in order to ensure the application of the regulation. In fact, the Federal Republic of Germany has adopted numerous legislative provisions enabling action to be taken against the unlawful use of a PDO, in particular the Law against unfair competition (Gesetz gegen den unlauteren Wettbewerb) of 7 June 1909 and the Law on trade marks and other distinctive signs (Gesetz über den Schutz von Marken und sonstigen Kennzeichen) of 25 October 1994 (BGBl. 1994 I, p. 3085).
- 64 Moreover, the possibility of taking legal action in respect of any conduct that would be contrary to the rights derived from a PDO is not reserved solely to the holder of that designation. That possibility is, on the contrary, open to competitors, business associations and consumer organisations. The very large class of persons entitled to bring an action suffices to demonstrate that the provisions in force in the Federal Republic of Germany are not limited to enabling producers established in the region of origin of the product concerned to enforce their intellectual property rights. Those provisions establish a general and efficient system which makes it possible to prevent infringements of Article 13 of Regulation No 2081/92 and to punish them effectively by means of judicial decisions.
- 65 By granting those civil law rights, the Federal Republic of Germany has taken all the measures necessary to guarantee full application of Article 13(1) of Regulation No 2081/92. It is not necessary for the public authorities to take administrative action on their own initiative against infringements of that provision, and that is also not required under Articles 10 and 13 of the regulation. According to the Federal Republic of Germany, it follows from a comparison of the different language versions of Article 10(4) of Regulation No 2081/92 that, given the Italian origin of the PDO 'Parmigiano Reggiano', it is the Consorzio del formaggio Parmigiano Reggiano and not the German inspection structures which must ensure compliance with the specification for that designation when it is used.
- 66 According to the Federal Republic of Germany, while the Commission observes that the action taken by the Member State concerned against infringements of Article 13 of Regulation No 2081/92 must ensure not only the protection of private economic interests but also that of consumers, that does not stem from any particularity of the regulation of such a kind as to render insufficient – in contrast to the position regarding other intellectual property rights or regarding competition law – the system of protection of designations of origin by providing civil law remedies.
- 67 Finally, the Federal Republic of Germany contends that if, in Germany, use of the name 'Parmesan' for products which do not comply with the requirements of the specification for the PDO 'Parmigiano Reggiano' is not subject to proceedings brought on the authorities' initiative or to criminal penalties, even supposing that such use infringes Article 13(1) of Regulation No 2081/92, that situation arises simply because of a decision not to use some penalties which the Member States may impose, but are not obliged to impose, in compliance with the current state of Community law.
- 68 In that regard, it should be pointed out that the right of individuals to rely on the provisions of a

regulation before their national courts cannot release the Member States from their duty to take the national measures which may be needed to ensure its full application (see, *inter alia*, Case 72/85 *Commission v Netherlands* [1986] ECR 1219, paragraph 20).

69 It is not disputed that the German legal system provides legal instruments such as the legislative provisions mentioned in paragraph 63 above which are designed to ensure the effective protection of the rights which individuals derive from Regulation No 2081/92. It is also not disputed that the possibility of taking legal action against any conduct that might infringe the rights derived from a PDO is not reserved solely to the legitimate user of that designation. It is, on the contrary, open to competitors, business associations and consumer organisations.

70 In those circumstances, such legislation is capable of guaranteeing the protection of interests other than those of the producers of the goods protected by a PDO, in particular the interests of consumers.

71 At the hearing, the Federal Republic of Germany moreover pointed out that several cases concerning the use in Germany of the name 'Parmesan' are currently pending before the German courts, one of which was brought by the Consorzio del formaggio Parmigiano Reggiano.

72 With regard to the Commission's complaint concerning the obligation on the Member States to take on their own initiative the measures necessary to penalise infringements of Article 13(1) of that regulation, the following points must be made.

73 First of all, there is no such obligation under Article 10 of Regulation No 2081/92.

74 It is true that, in order to ensure the effectiveness of the provisions of Regulation No 2081/92, Article 10(1) of that regulation provides that the Member States shall ensure that inspection structures are in place not later than six months after its entry into force. They are therefore obliged to create such structures.

75 Nevertheless, Article 10(4) of Regulation No 2081/92, by providing that '[i]f a designated inspection authority and/or private body in a Member State establishes that an agricultural product or a foodstuff bearing a protected name of origin in that Member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that this Regulation is complied with ...', indicates that the designated inspection authority and/or private body in a Member State is that of the Member State from which the PDO comes.

76 The reference to the 'producers or processors subject to their control' in Article 10(3) of that regulation, like the producers' right of access to the inspection system provided for in Article 10(6) and their obligation under Article 10(7) to bear the costs of the inspections, confirm that Article 10 of Regulation No 2081/92 concerns the obligations of the Member States from which the PDO comes.

77 That interpretation is further reinforced by the provisions of Articles 4(2)(g) in conjunction with Article 5(3) and (4) of Regulation No 2081/92, which require that the application for registration includes the specification, that that application is addressed to the Member State in which the geographical area is located, and that the specification includes 'details of the inspection structures provided for in Article 10'.

78 It follows that the inspection structures whose task it is to ensure compliance with the PDO specification are those of the Member State from which the PDO in question comes. The responsibility for monitoring compliance with the specification when the PDO 'Parmigiano Reggiano' is used therefore does not lie with the German inspection authorities.

79 It is true that Article 13(1)(b) of Regulation No 2081/92 requires that registered names be protected against any 'misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar'.

80 Nevertheless, the Commission has not demonstrated that the Federal Republic of Germany has failed

to comply with the obligations under Regulation No 2081/92, and it has not furnished proof that measures such as those referred to in paragraph 63 above were not taken or were not such as to protect the PDO 'Parmigiano Reggiano'.

81 In the light of all the foregoing, it must be held that the Commission has not established that, by formally refusing to proceed against the use on its territory of the name 'Parmesan' on the labelling of products which do not comply with the requirements of the specification for the PDO 'Parmigiano Reggiano', the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of Council Regulation (EEC) No 2081/92.

82 The action brought by the Commission must therefore be dismissed.

Costs

83 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the Federal Republic of Germany has applied for costs and the Commission has been unsuccessful in all its pleas, the Commission must be ordered to pay the costs. In accordance with Article 69(4), the Czech Republic, the Kingdom of Denmark, the Italian Republic and the Republic of Austria must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Dismisses the action;**
- 2. Orders the Commission of the European Communities to pay the costs;**
- 3. Orders the Czech Republic, the Kingdom of Denmark, the Italian Republic and the Republic of Austria to bear their own costs.**

[Signatures]

* Language of the case: German.