

JUDGMENT NO. 66 YEAR 2013

In this Case the Court heard an application from the President of the Council of Ministers challenging a Lazio regional law establishing a “regional quality mark” for agricultural and agri-food products, alleging that it violated EU law as a quantitative restriction on imports and exports or measure having equivalent effect. The Court held that, even though any operator from any Member State was theoretically entitled to be awarded the mark, it was at least “indirectly” or “potentially” liable to have a restrictive effect on the free movement of goods, noting also that even if the mark could be created with the aim of protecting quality (which it could not as the region lacked the power to do so), it would still remain subject to EU law on free movement of goods.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Articles 1(1) and (2), 2, 3(1)(a), (b), (c), and (e), 6, 9 and 10 of Lazio Regional Law no. 1 of 28 March 2012 laying down “Provisions to support quality and traceability systems for agricultural and agri-food products. Amendments to Regional Law no. 2 of 10 January 1995 (Establishment of the Regional Agency for Development and Innovation of Agriculture in Lazio – ARSIAL) and subsequent amendments”, initiated by the President of the Council of Ministers by the referral order served on 11 June 2012, filed in the Court Registry on 19 June 2012 and registered as no. 96 in the Register of Applications 2012.

Given the entry of appearance by Lazio Region;

having heard the judge rapporteur Mario Rosario Morelli at the public hearing of 12 March 2013;

having heard the State Counsel [*Avvocato dello Stato*] Giuseppe Albenzio for the President of the Council of Ministers and Counsel Francesco Saverio Marini for Lazio Region.

[omitted]

Conclusions on points of law

1.— The President of the Council of Ministers has contested a range of provisions in Lazio Regional Law no. 1 of 28 March 2012 laying down “Provisions to support quality and traceability systems for agricultural and agri-food products. Amendments to Regional Law no. 2 of 10 January 1995 (Establishment of the Regional Agency for Development and Innovation of Agriculture in Lazio – ARSIAL), and subsequent amendments”, arguing that they violate Article 117(1) of the Constitution, in relation to Articles 34 to 36 of the Treaty on the Functioning of the European Union (TFEU) and Article 120(1) of the Constitution.

With the aim (stated in Article 1) of “guaranteeing the quality of agricultural and agri-food products for consumers” and of encouraging “the exploitation and promotion of typical regional eno-gastronomic culture”, Articles 1(1) and (2)(c), 2, 3(1)(a), (b), (c) and (e), 6, 9 and 10 of the regional law – to which the applicant’s question of constitutionality makes particular reference – respectively govern:

– the establishment of a “collective regional quality mark”, authorising the Regional Executive to designate by resolution the types of product entitled to use the mark and to adopt the respective rules applicable to production (Article 1(1) and (2) and Article 2);

– the criteria and arrangements applicable to the award of the mark, the grounds for suspension, expiry and revocation and the arrangements governing its usage (Article 3(1)(a), (b), (c) and (e) and Article 9);

– the award of subsidies in relation to the regional mark due to be established (Articles 1(2)(c), 6 and 10).

2.— The establishment and resulting regulation of such a collective quality mark by Lazio Region is alleged, by the applicant, to violate European Union law – in relation to the provisions, *inter alia*, of Articles 34 and 35 TFEU, which prohibit Member States from imposing quantitative restrictions on imports and exports and measures having equivalent effect – and thus to violate Article 117(1) of the Constitution, which requires that obligations resulting from Community law be complied with during the exercise of legislative powers. It is also claimed to violate Article 120(1) of the Constitution “on the grounds that the measure adopted by Lazio Region may hinder the free movement of goods also within the national market, by encouraging consumers to prefer goods from

Lazio over those originating from other Regions”. However, no specific argument is submitted in relation to Article 36 TFEU.

3.— The respondent region argues by contrast that the mark in question, which it had adopted with the main goal of consumer protection, does not violate the principles of constitutional law invoked and the related provisions of Community law, as it is not liable to direct the general interest of consumers to prefer goods from Lazio. This is due to its “entirely neutral stance” with regard to the geographical origin of the product, since “it may be used by all sectoral operators, including those with facilities in Lazio Region and those operating in another region of Italy or, more generally, within the Member States”.

4.— The question is well founded.

According to the case law of the Court of Justice – which implements, in terms of “living law”, the provisions of Articles 34 to 36 TFEU, and to which reference must be made in order to establish their relevance, as standards against which to perform the constitutional review under Article 117 of the Constitution (see Judgment no. 191 of 2012) – a “measure having equivalent effect” (to prohibited quantitative restrictions) has been consistently construed broadly as covering “all trading rules enacted by Member States which [sic.] are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade” (see the judgments of the Court of Justice of 6 March 2003 in Case C-6/2002, *Commission v. France*; of 5 November 2002 in Case C-325/2000, *Commission v. Germany*; and of 11 July 1974 in Case C-8/1974, *Dassonville v. Belgium*).

By introducing a “regional” quality mark to distinguish particular agricultural and agri-food products, on the basis of regulations and in accordance with criteria adopted by the Region, with the aim (indeed, the stated aim) of promoting the agriculture and gastronomical culture of Lazio – the Lazio regional law contested here is undeniably liable to induce consumers to prefer products branded with that regional mark over other similar products of different origin, and consequently to bring about, at the very least “indirectly” or “potentially”, the restrictive effects on the free movement of goods, which also regional legislation is prevented from imposing, under Community law.

On the contrary, neither the goal of consumer protection nor the extra-territorial nature of the mark (which is moreover only hypothetical) – in which the respondent’s

representative places great stock – is relevant, since the Region does not indicate what competence it has over either aspect, and does not in fact even have any such competence.

As regards the former issue, consumer protection is a matter for private law, reserved for the exclusive competence of the central State (see Judgment no. 191 of 2012, cited above); as regards the latter, it does not fall to Lazio Region to certify, as it seeks to do, the “quality” of goods throughout the country and other Member States of the European Union.

This is irrespective of the consideration that the creation of a mark by a public body, with the goal of pursuing a quality policy, does not place it beyond the scope of legislation on the protection of trade (see Court of Justice, judgment of 5 November 2002 in Case C-325/2000, cited above).

With regard to the principle established by Article 117(1) of the Constitution (on the restrictions resulting from Community law on the exercise of legislative power by the State and the Regions), the question is therefore well-founded with reference to all provisions specifically contested, whilst the further issue of the violation of Article 120(1) of the Constitution requires no discussion.

5.— The declaration of unconstitutionality must be extended to all provisions of the contested law, due to the fact that they are closely interrelated.

ON THOSE GROUNDS

THE CONSTITUTIONAL COURT

declares that Lazio Regional Law no. 1 of 28 March 2012 laying down “Provisions to support quality and traceability systems for agricultural and agri-food products. Amendments to Regional Law no. 2 of 10 January 1995 (Establishment of the Regional Agency for Development and Innovation of Agriculture in Lazio – ARSIAL), and subsequent amendments”, is unconstitutional.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 8 April 2013.

