

# Case Notes

## The Cases of *Edam Holland* and *Gouda Holland*: Continuing Road Back Home as Protected Indications of Geographical Origin

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*Cases C-517/14 P and C-519/P, Schutzgemeinschaft Milch und Milcherzeugnisse e.V. v European Commission, Kingdom of the Netherlands, Nederlandse Zuivelorganisatie, unreported 24 October 2014 (Seventh Chamber).*

*In the two related cases commented on, the Court of Justice of the European Union (CJEU) dealt with assessment of locus standi in the case of an applicant who disputed the validity of registration of two indications of geographical origin (IGOs), namely Edam Holland and Gouda Holland, being compound designations and containing a famous generic word designation (name), i.e. Edam and Gouda respectively. The importance of both cases relates, on the one hand, to the fact that registration of these IGOs was challenged on the basis of the generic names Edam and Gouda which are extensively used in practice, occupying a considerable market share. On the other, both cases could be a signal whether the CJEU re-affirms its restrictive approach to assessment of locus standi under Article 263 (4) TFEU. Although the CJEU re-affirmed its longstanding case law on restrictive assessment of locus standi also concerning registration of a compound geographical designation on the basis of a generic name, yet, as is argued in this case note, this approach did not take into account the specifics of registering IGOs (author's summary).*

### I. Background

The law of indications of geographical origin (IGOs)<sup>1</sup> distinguishes different types of classification of IGOs depending on different classification criteria.<sup>2</sup> As regards word IGOs based on classification by expression, the word IGOs may consist of two or more words be-

ing considered as so-called compound (or composite) IGOs. Currently effective European Union (EU) law within the direct protection system of IGOs in respect of agricultural products and foodstuffs<sup>3</sup> admits the possibility for registration of compound IGOs, specifically, by Article 13 (1) of the Quality Schemes Regulation<sup>4</sup>; Articles 10 and 16 of the 2008 Spirits Regulation<sup>5</sup>; Part

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1 Within this article, the concept of IGOs covers geographical designations referring either directly or indirectly to the geographical origin of goods (and services if applicable, for instance, in the case of the so-called indirect protection system or national law of EU Member States).

2 For an overview of types of IGO, see, for instance, Vadim Mantrov, *EU law on indications of geographical origin* (Cham: Springer, 2014), at pp. 48-52.

3 For division of EU law on IGOs into direct and indirect protection systems, see generally Vadim Mantrov, "Protection Norms of Indications of Geographical Origin in the Applicable EU Regula-

tions – Recent Changes and the Necessity for Further Unification", 43 IIC (2012), at pp. 175-184; Mantrov, *EU law on indications of geographical origin*, *supra* note 2, at pp. 139-145.

4 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 343/1 [Quality Schemes Regulation].

5 Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 OJ 2008 L 39/16 [2008 Spirits Regulation].

II (1) of Annex VII of the CMO Regulation<sup>6</sup>; and Article 5 (4) of the 2014 Aromatised Wines Regulation<sup>7</sup>.

So far, disputes in relation to registered compound IGOs have covered the scope of protection of registered IGOs, for instance, in relation to the protected designation of origin (PDO) *Bayerisches Bier*<sup>8</sup>; the PDO *Parmigiano Reggiano*<sup>9</sup>; and the PDO *Époisses de Bourgogne*<sup>10</sup>, as discussed in legal literature<sup>11</sup>.

Likewise, the Court of Justice of the European Union (CJEU) has also dealt with assessment of *locus standi* of a person who challenges the validity of a regulation adopted by the European Commission (EC) on registration of a particular PDO or PGI (protected geographical indication). Much as in the case of other matters, the CJEU's restrictive interpretation of *locus standi* 'opened the door to a long list of order of inadmissibility of actions' brought by non-privileged applicants.<sup>12</sup> The following cases involving registered compound IGOs could be mentioned where lack of *locus standi* was established: *Turrón de Jijona* and *Turrón de Alicante*;<sup>13</sup> *Toscano*;<sup>14</sup> *Pays*

*d'Auge/Pays d'Auge-Cambremer*;<sup>15</sup> *Altenburger Ziegenkäse*;<sup>16</sup> *Miel de Provence*<sup>17</sup>.

Recently, assessment of *locus standi* was tested in two related cases involving compound IGOs containing the famous generic names *Edam* and *Gouda* referring to Dutch-type cheese varieties<sup>18</sup> to be discussed further.

## II. Facts

The origin of the word designation *Edam* for cheeses comes from the town of Edam in the northern Netherlands where this cheese was produced<sup>19</sup>, but in the case of the word designation *Gouda* from the town in the Netherlands where this cheese was marketed<sup>20</sup>. Initially, both designations were subject to protection including at the international level under the Stresa Convention<sup>21</sup> in relation to the word designation *Edam*.<sup>22</sup> However, later this situation changed as both these IGOs turned into generic names. As a result, at least since 1996 the EC has acknowledged that both

6 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 OJ 2013 L 347/671 [CMO Regulation].

7 Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 OJ 2014 L 84/14 [2014 Aromatised Wines Regulation].

8 Case C-120/08, *Bavaria NV v Bayerischer Brauerbund eV* [2010] ECR I-13393 – *Bayerisches Bier*.

9 Case C-132/05, *Commission of the European Communities v Federal Republic of Germany* [2008] I-00957 – *Parmesan/Parmigiano Reggiano*.

10 *Joined Cases C-129/97 and C-130/97, Criminal proceedings against Yvon Chiciak and Fromagerie Chiciak (C-129/97) and Jean-Pierre Fol (C-130/97)* [1998] ECR I-03315 – *Époisses de Bourgogne*.

11 Bernard O'Connor, *The Law of Geographical Indications* (London: Cameron May, 2004), at p. 138; Michael Blakeney, *The Protection of Geographical Indications: Law and Practice* (Cheltenham; UK, Northampton; MA, USA: Edward Elgar Publishing, 2014), at p. 116.

12 Roberto Mastroianni and Andrea Pezza, "Striking the Right Balance: Limits on the Right to Bring an Action under Article 263 (4) of the Treaty on the Functioning of the European Union", 30 *American University International Law Review* (2015), at pp. 746 *et seq.*

13 Case T-114/96, *Confiserie du TECH SA and Biscuiterie Confiserie LOR SA v Commission of the European Communities* [1999] ECR II-00913 – *Turrón de Jijona and Turrón de Alicante*.

14 Case T-78/98, *Unione provinciale degli agricoltori di Firenze, Unione pratese degli agricoltori, Consorzio produttori dell'olio*

tipico di oliva della provincia di Firenze, Francesco Miari Fulcis, Bonaccorso Gondi, Simone Giannozzi and Antonio Morino v Commission of the European Communities [1999] ECR II-01377 – *Toscano*.

15 Case T-114/99, *CSR PAMPRYL v Commission of the European Communities* [1999] ECR II-03331 – *Pays d'Auge/Pays d'Auge-Cambremer*.

16 Case C-447/98 P, *Molkerei Großbraunshain GmbH and Béné Nahrungsmittel GmbH v Commission of the European Communities* [2000] ECR I-09097 – *Altenburger Ziegenkäse*.

17 Case T-35/06, *Honig-Verband eV v Commission of the European Communities* [2007] ECR II-02865 – *Miel de Provence*.

18 For an overview of the characteristics of these two cheese varieties, see M. Düsterhöft, W. Engels and G. van den Berg, "Cheese | Dutch-Type Cheeses", in John W. Fuquay, Patrick F. Fox, Paul McSweeney (eds.), *Encyclopedia of Dairy Sciences*, 2nd ed. (Boston: MA, Elsevier, 2011), at pp. 721-727.

19 M. Hickey, "Cheese | Current Legislation for Cheeses", in John W. Fuquay, Patrick F. Fox, Paul McSweeney (eds.), *Encyclopedia of Dairy Sciences*, 2nd ed. (Boston: MA, Elsevier, 2011), at pp. 843-855.

20 *Gouda Cheese Capital*. Available on the Internet at <<http://www.goudaakaasstad.nl/en/home#kaasstad>> (last accessed on 26 February 2016).

21 International Convention on the Use of Designations of Origin and Names for Cheeses, signed at Stresa on 1 June 1951 [Stresa Convention].

22 For details of the Stresa Convention, see, for instance, Michael Blakeney, *Intellectual Property Rights and Food Security* (Wallingford, UK; Cambridge, USA: CABI, 2009), at p. 189; Marsha A. Echols, *Geographical Indications for Food Products: International Legal and Regulatory Perspectives* (AH Alphen aan den Rijn: Kluwer Law International, 2008), at pp. 48 *et seq.*; O'Connor, *The Law of Geographical Indications*, *supra* note 11, at pp. 34-36.

word designations *Edam* and *Gouda* are considered to be generic names<sup>23</sup>.

The fact that both these designations became generic names allowed producers outside of Holland to produce cheeses under these designations in a specification traditionally known to consumers. This situation also led to disputes concerning the conditions of use of these generic names. So, in the *Deserbais* case, the CJEU reviewed the situation whether cheese produced in Germany with the designation *Edam* could be brought into France, where the requirement of minimum fat content is higher than that of German cheese.<sup>24</sup> In *Deserbais* the CJEU held, as indicated in legal literature, in line with the *Cassis de Dijon* doctrine, that the French rule was incompatible with Art 28 EC (now Art 34 TFEU), and could not be saved by mandatory requirements.<sup>25</sup>

The PDOs *Noord-Hollandse Edammer* and *Noord-Hollandse Gouda*<sup>26</sup> registered based on the so-called simplified procedure<sup>27</sup> were the first registered compound IGOs containing the above generic names. At the moment of their registration the EC stated that '[p]rotection of the name 'Edammer' [or 'Gouda'] is not sought'.<sup>28</sup>

Afterwards, registration as PGIs was sought for two compound IGOs: *Gouda Holland* and *Edam Hol-*

*land*<sup>29</sup>. After a positive result of scrutiny of the application for registration, the EC published<sup>30</sup> the required information concerning these IGOs<sup>31</sup>. Objections on different grounds were raised by different EU and non EU MS as well as legal persons.<sup>32</sup>

As no agreement was reached between the Netherlands and these Member States and persons in accordance with Art 7 (5) of the Foodstuffs Regulation<sup>33</sup>, the European Commission adopted the Regulations for registration<sup>34</sup> of both IGOs<sup>35</sup>. However, by addressing the objections raised and for the sake of clarity in civil circulation concerning cheeses under the designations *Gouda* and *Edam*, the European Commission noted that notwithstanding registration of the IGOs *Gouda Holland* or *Edam Holland*, the names *Gouda* and *Edam* respectively 'may continue to be used within the territory of the Union, provided the principles and rules applicable in its legal order are respected'.<sup>36</sup>

Schutzgemeinschaft Milch und Milcherzeugnisse e.V. (a trade association of milk and milk product producers that, inter alia, manufactures and distributes cheese with the designation *Gouda* or *Edam*) challenged the annulment of each Regulation in separate proceedings before the General Court. In reviewing the admissibility of both actions, i.e. the *locus standi*

23 European Commission, 1996, Press Release IP/96/153. Available on the Internet at <[http://europa.eu/rapid/press-release\\_IP-96-153\\_en.htm](http://europa.eu/rapid/press-release_IP-96-153_en.htm)> (last accessed on 26 February 2016).

24 Case 286/86, *Ministère public v Gérard Deserbais* [1988] ECR 04907 – Deserbais.

25 Paul Craig and Gráinne de Búrca, *EU law: Text, Cases and Materials*, 4th ed. (Oxford: Oxford University Press, 2008), at p. 680.

26 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 Council Regulation (EEC) No 2081/92 OJ 1996 L 148/1.

27 Case C-108/01, *Consorzio del Prosciutto di Parma and Salumificio S. Rita SpA v Asda Stores Ltd and Hygrade Foods Ltd* [2003] ECR I-05121, at paras. 19, 91-99; Case C-469/00 *Ravil SARL v Bellon import SARL and Biraghi SpA* [2003] ECR I-05053 – Grana Padano, at paras. 15, 95-104; Case T-114/96 - *Turrón de Jijona and Turrón de Alicante*, *supra* note 13, at paras. 6, 12.

28 Commission Regulation (EC) No 1107/96, at footnotes 18-19.

29 Facts concerning the proceedings at the national stage and before the General Court and the CJEU are summarised in the discussed CJEU orders (Case C-517/14 P, *Schutzgemeinschaft Milch und Milcherzeugnisse e.V. v European Commission, Kingdom of the Netherlands, Nederlandse Zuivelorganisatie* [2015] ECR I-00000 – *Edam Holland*, at paras. 8-11; Case-519/14 P, *Schutzgemeinschaft Milch und Milcherzeugnisse e.V. v European Commission* [2015] ECR I-00000 – *Gouda Holland*, at paras. 8-11).

30 Publication of an application pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs OJ 2008 C 57/39 (*Edam*); Publication of an appli-

cation pursuant to Article 6(2) of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs OJ 2008 C 61/15 (*Gouda*).

31 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 93/12 [2006 Foodstuffs Regulation].

32 Commission Regulation (EU) No 1122/2010 of 2 December 2010 entering a designation in the register of protected designations of origin and protected geographical indications [*Gouda Holland* (PGI)] OJ 2010 L 317/22, preamble, at paras. 2-3; Commission Regulation (EU) No 1121/2010 of 2 December 2010 entering a designation in the register of protected designations of origin and protected geographical indications [*Edam Holland* (PGI)] OJ 2010 L 317/14, preamble, at paras. 2-3.

33 Now Art 51 (3) Quality Schemes Regulation.

34 Though later minor amendments were introduced to the specification of both registered PGIs (Publication of an application for approval of a minor amendment in accordance with the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council OJ 2015 C 310/8 [*Edam Holland*]; Publication of an application for approval of a minor amendment in accordance with the second subparagraph of Article 53(2) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council OJ 2015 C 310/14 [*Gouda Holland*]).

35 Art 1 (1) Regulation No 1122/2010; Art 1 (1) Regulation No 1121/2010.

36 Art. 1 (2) Regulation No 1122/2010, Art. 1 (2) Regulation No 1121/2010.

of the applicant, the General Court rejected actions brought by this association through use of an order on the basis of Art 113 of its Rules of Procedure. The orders of the General Court in both proceedings were appealed and reviewed by the CJEU, whose reasoning will be summarised in the next section.

### III. Orders

As the case was decided on the issue of admissibility, the CJEU chose the form of reasoned order on the basis of Article 118 of its Rules of Procedure as the pleas submitted to the CJEU by the applicant in both cases were either manifestly inadmissible or manifestly unfounded.

In both cases, four pleas were raised before the CJEU by the applicant involving evidential matters (not reviewed here) and disputing the conclusions of the General Court on lack of *locus standi* to challenge the contested Regulations by the above association of producers.

The appellant argued before the CJEU that the General Court had erred in its interpretation of the law as the contested Regulations do not state clearly whether the designations *Gouda* and *Edam* are to be considered as generic names. The CJEU concluded that, as the contested Regulations stated that ‘the term “Edam” [or “Gouda”] may continue to be used’, it is

manifestly unfounded to claim that the contested Regulations did not recognise it as a generic name.<sup>37</sup>

Furthermore, the appellant argued that the General Court committed an error of law in not recognising its *locus standi* in bringing proceedings stemming from its own right of appeal which it possesses under the 2006 Foodstuffs Regulation.<sup>38</sup> However, the applicable 2006 Foodstuffs Regulation<sup>39</sup> provides that EU residents may file objections against registration of a particular GI only within a particular EU MS. Therefore, the CJEU concluded that the General Court did not err in law by concluding that natural or legal persons being an EU resident cannot lodge an objection directly with the EC.<sup>40</sup>

Another plea related to the competitive relationship between the applicant’s producers and Dutch producers of cheeses protected by the PGIs in question; therefore ‘the multitude of products marketed under the name ‘Edam’ and the risk of confusion to which consumers are consequently subject demonstrate that all ‘Edam’ [or Gouda] products are in competition on the market’.<sup>41</sup> Since this argument does not indicate, as the CJEU held, how the General Court committed such a distortion, it was rejected as being manifestly inadmissible.<sup>42</sup>

### IV. Comment

The CJEU’s reasoning relates to examination of a legal provision from which stems the *locus standi* of an applicant to bring an action to challenge the contested Regulations. Under Article 263 (4) TFEU (ex Article 230 (4) EC) any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.<sup>43</sup> As rightly argued by legal commentators, there is no valid reason why the notion of direct concern should be interpreted differently from the CJEU approach of its interpretation concerning the previously effective regulation in ex Article 230 (4) EC.<sup>44</sup>

The applicant in both cases is considered a so-called ‘non-privileged applicant’ under the above provision, and, therefore, shall demonstrate *locus standi* in challenging the contested Regulations, i.e. must prove that the contested Regulations are either ‘of direct and individual concern to’ or ‘direct concern to

37 Case C-517/14 P – Edam Holland, *supra* note 29, at paras. 19-21; Case C-519/14 P – Gouda Holland, *supra* note 29, at paras. 19-21.

38 Case C-517/14 P – Edam Holland, *supra* note 29, at para. 30; Case C-519/14 P – Gouda Holland, *supra* note 29, at para. 30.

39 Similarly to the currently effective Quality Schemes Regulation but differently from other Regulations within the direct protection system to be discussed further in the next section.

40 Case C-517/14 P – Edam Holland, *supra* note 29, at para. 34; Case C-519/14 P – Gouda Holland, *supra* note 29, at para. 34.

41 Case C-517/14 P – Edam Holland, *supra* note 29, at para. 36; Case C-519/14 P – Gouda Holland, *supra* note 29, at para. 36.

42 Case C-517/14 P – Edam Holland, *supra* note 29, at para. 40; Case C-519/14 P – Gouda Holland, *supra* note 29, at para. 40.

43 For an overview of this provision in general, see generally Alexander H Türk, *Judicial Review in EU Law* (Cheltenham; UK, Northampton; MA, USA: Edward Elgar Publishing, 2009), at pp. 166-169; Christoph Werkmeister, Stephan Pötters, Johannes Traut, ‘Regulatory Acts within Article 263 (4) TFEU – A Dissonant Extension of Locus Standi for Private Applicants’, 13 *The Cambridge Yearbook of European Legal Studies* (2011), at pp. 311 *et seq.*

44 Werkmeister, Pötters, Traut, ‘Regulatory Acts within Article 263 (4) TFEU – A Dissonant Extension of Locus Standi for Private Applicants’, *supra* note 43, at pp. 329-330.



them and do not entail implementing measures<sup>45</sup> based on the requirement of ‘direct concern’, i.e. *locus standi*.<sup>46</sup>

Demonstration of legal interest, however, is not required in the case of EU Member States being as so-called privileged applicants, which may challenge a particular legal act of EU institutions without demonstrating a legal interest as such.<sup>47</sup> An example of this situation is the second and final dispute over registration of the PDO *Feta*<sup>48</sup> in two related cases: if the contested Regulation was challenged by an EU Member State, no issues on admissibility were considered<sup>49</sup>; but if by a natural or legal person, admissibility was checked and the action was dismissed due to lack of *locus standi*<sup>50</sup>.

As is evident from the CJEU reasoning, it is not specified which criterion laid down in Article 263 (4) TFEU explicitly examined by the General Court<sup>51</sup> and consequently approved by the CJEU was actually relevant. However, it may be clear that both courts focused on assessing the criterion of ‘direct concern’, i.e. *locus standi*. Similarly, although the above provision was referred to in both judgments of the General Court, which obviously reviewed the arguments of the applicants from the viewpoint of this legal norm, no clear link could be identified between the conditions mentioned in Article 263 (4) TFEU for assessment of having *locus standi* and the conclusions drawn either by the General Court or the CJEU. Therefore, that line of reasoning does not provide clear grounds why the applicants, as associations of producers and using the word designations in question, failed to comply with the requirements set by the above provision. However, this situation is different

from other cases relating to examination of the *locus standi* of an applicant challenging registration of a particular registered compound GI under that provision.<sup>52</sup> From this aspect, the CJEU’s reasoning in the orders in both present cases could hardly be evaluated as satisfactory.

Furthermore, the CJEU interpreted *locus standi* of the applicant under Article 263 (4) TFEU by using the restrictive approach<sup>53</sup> re-affirming the CJEU’s restrictive approach to assessing the *locus standi* of applicants challenging registration of either PDOs or PGIs.

However, both present cases were decided on guidelines developed within CJEU case law for use on a general basis without taking into account the specifics of the registration system of IGOs. So, the CJEU affirmed the conclusion of the General Court that the applicant ‘would not be of any advantage’ by annulment of the contested Regulations as it would be continuously entitled to use the generic names *Edam* or *Gouda*. However, this conclusion could be questionable in the present factual and legal situation because the interest of the applicant is not to allow the mere appearance of the registered compound PGI which contains a generic name and links it with the original place of production, i.e. the Netherlands. That would lead to creation of a new right on the part of interested persons in using that GI and provide economic consequences arising from consumers’ behaviour in choosing a product designated by the compound PGI instead of products manufactured and marketed by the applicant’s members. Therefore, annulment of the contested Regulations would lead to precluding legal and economic advantages for producers entitled to use that PGI.

45 As the second criterion for establishing *locus standi* also applies to Regulations being regulatory acts (see Türk, *Judicial Review in EU Law*, *supra* note 43, at pp. 167-168).

46 For the first two cases decided by the General Court on the application of Art 263 (4) TFEU in relation to this second criterion, see Steve Peers and Marios Costa, “Court of Justice of the European Union (General Chamber) Judicial Review of EU Acts after the Treaty of Lisbon; Order of 6 September 2011, Case T-18/10 Inuit Tapiriit Kanatami and Others v. Commission & Judgment of 25 October 2011, Case T-262/10 Microban v. Commission”, 8 *European Constitutional Law Review* (2012), at pp. 82 – 104.

47 Art 263 (2) TFEU.

48 Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name “Feta” OJ 2002 L 277/10.

49 Joined cases C-465/02 and C-466/02, Federal Republic of Germany (C-465/02) and Kingdom of Denmark (C-466/02) v Commission of the European Communities [2005] ECR I-09115 – Feta II.

50 Case T-397/02, Arla Foods AMBA and Others v Commission of the European Communities [2005] ECR II-05365; Case T-370/02, Alpenhain-Camembert-Werk and Others v Commission of the European Communities [2004] ECR II-02097.

51 Case T-112/11, Schutzgemeinschaft Milch und Milcherzeugnisse eV v Commission (Action for annulment — Registration of a protected geographical indication [2014] ECR II-00000 – Edam Holland, at para. 24; Case T-113/11, Schutzgemeinschaft Milch und Milcherzeugnisse eV v European Commission [2014] ECR II-00000 – Gouda Holland, at para. 24.

52 See Case T-114/96 - Turrón de Jijona and Turrón de Alicante, *supra* note 13, at para. 26 *et seq.*; T-35/06 - Miel de Provence, *supra* note 17, at para. 39 *et seq.*; Case C-447/98 P - Altenburger Ziegenkäse, *supra* note 16, at para. 63 *et seq.*; Case T-114/99 - Pays d’Auge/Pays d’Auge-Cambremér, *supra* note 15, para 41 *et seq.*; Case T-78/98 - Toscano, *supra* note 14, at para. *et seq.*

53 For a discussion of this restrictive approach, see Werkmeister, Pötters, Traut, “Regulatory Acts within Article 263 (4) TFEU – A Dissonant Extension of Locus Standi for Private Applicants”, *supra* note 43, at pp. 312-313.

At the same time, the argument used by the General Court and approved by the CJEU<sup>54</sup> that the contested Regulation 'is not intended to abolish a right held by the applicant's members, but to grant a new right to all operators'<sup>55</sup>, is valid as the right to use the generic name *Edam* or *Gouda* would neither be abolished nor restricted by the mere fact of registration of the compound PGIs in question.

Although the General Court in this situation referred to the *Toscana* case (referred to above)<sup>56</sup>, that reference is doubtful since in that case no compound GI was registered containing a generic name; rather, that dispute was artificial as the opposing geographic designation *Colline de Firenze* did not have any legal relation to the registered GI *Toscana*.

A significant aspect concerning demonstrating *locus standi* in the present cases relates to the interrelation of *locus standi* required by Article 263 (4) TFEU and the objection procedure against registration of IGOs. In this situation, the objection filed by the applicant with the German authorities was found admissible by the EC, i.e. it was declared that the applicant '[has] a legitimate interest' under the legislative framework of the 2006 Foodstuffs Regulation. At the same time, the General Court and the CJEU undertook assessment of *locus standi* anew, now on the basis of Article 263 (4) TFEU concerning an action against annulment of the contested Regulations.

The argument employed in this case,<sup>57</sup> as well as the *Miel de Provence* case<sup>58</sup>, is that an objection within the EC is actually filed by an EU MS but not by an

individual applicant. Therefore, the applicant's *locus standi* under Article 263 (4) TFEU, as concluded by these Courts, is assessed for the first time and may not be linked with the objection procedure. Formally, this approach could be considered justified because objections against registration during the objection procedure may be filed by EU MS only in respect of EU residents. However, neither the applicable 2006 Foodstuffs Regulation<sup>59</sup> nor the currently effective Quality Schemes Regulation<sup>60</sup> provides a procedure for handling these objections within EU MS whose authorities, therefore, merely transmit those objections to the EC. Therefore, from the substantive point of view, the EC reviews objections from these natural and legal persons in essence, even though formally those objections are submitted to the EC by EU MS.

Moreover, this approach actually leads to discrimination against EU residents without valid reason because non-EU residents could submit objections against registration of a particular GI directly to the EC.<sup>61</sup> If later the latter persons requested annulment of the respective Regulation for registration of a GI, then the above discussed approach of both Courts would not work because the fact whether these persons have a legitimate interest would already have been established by the EC during the objection procedure. In this situation, it would be erroneous to deny the *locus standi* of non-EU residents in later court proceedings - a stage when the EC's response to an objection (if negative) is challenged before the General Court and the CJEU. Therefore, the peculiarities of the registration system of IGOs within the direct protection system should be tolerated within the context of demonstrating *locus standi* under Article 263 (4) TFEU.

However, this situation concerning lodging objections is different for IGOs registered on the basis of other Regulations. In their case, a natural or legal person being either an EU or non EU resident<sup>62</sup> may file an objection directly with the EC, which checks its admissibility.<sup>63</sup> Therefore, in the case of IGOs for spirits, wines, and aromatised wines EU residents would be treated similarly to non-EU residents.

Finally, an interesting issue relates to the possibility of registration of the designation 'Holland' raised before the EC but not before the General Court or the CJEU. The usual approach of the direct protection system relates to registration of existing geographical designations, yet registration of geographical des-

54 Case C-517/14 P – Edam Holland, *supra* note 29, at paras. 38 and 42; Case C-519/14 P – Gouda Holland, *supra* note 29, at paras. 38 and 42.

55 Case T-112/11 – Edam Holland, *supra* note 51, at para. 45; Case T-113/11 – Gouda Holland, *supra* note 51, at para. 45.

56 Case T-112/11 – Edam Holland, *supra* note 51, at para. 30; Case T-113/11 – Gouda Holland, *supra* note 51, at para. 30.

57 Case T-112/11 – Edam Holland, *supra* note 51, at para. 42; Case T-113/11 – Gouda Holland, *supra* note 51, at para. 42.

58 Case T-35/06 – Miel de Provence, *supra* note 17, at paras. 47-53.

59 See Art. 7 (2) and (3) 2006 Foodstuffs Regulation (now Arts. 51(1) second subpara. and 10 Quality Schemes Regulation).

60 See Art. 51 (1) and (2) Quality Schemes Regulation.

61 Art. 7 (2) third para 2006 Foodstuffs Regulation.

62 With an exception in the case of IGOs in respect of certain products such as wines including aromatised wines when this person should be from an EU or non EU MS other than that applying for the protection or in a third country (Art. 15 (1) 2014 Aromatised Wines Regulation; Art. 98 (1) CMO Regulation).

63 Art. 15 2014 Aromatised Wines Regulation; Art. 17 (7) 2008 Spirits Regulation; Art. 98 CMO Regulation.

ignations used consistently as a synonym for a particular geographical place, i.e. traditional geographical designations, is also allowed. The term *Holland* may be considered as such a designation in relation to the name of the country *The Netherlands*. Since the previously effective 2006 Foodstuffs Regulation allowed for registration of traditional geographical designations<sup>64</sup> as noted above, the EC's decision on registration of the compound PGIs in question containing the traditional geographical designation *Holland* complies with that Regulation. However, the currently effective Quality Schemes Regulation does not envisage<sup>65</sup> such a possibility, allowing registration of existing geographical designations only either separately or as part of a compound GI.<sup>66</sup> Therefore, registration of the traditional geographical designation *Holland* as a part of the compound PGIs discussed remains solely grounded on the regulatory framework of the 2006 Foodstuffs Regulation and could not be related to the currently effective Quality Schemes Regulation.

## V. Conclusion

The outcome of the cases commented on leads to approval of registration of other IGOs containing the

generic names *Edam* and *Gouda* as unitary rights, i.e. *Edam Holland* and *Gouda Holland*. As challenging of registration of both IGOs was unsuccessful due to lack of *locus standi*, the cases discussed continue the longstanding practice of denying *locus standi* for natural and legal persons challenging registration of IGOs including compound IGOs under Article 263 (4) TFEU. However, this outcome relates only to IGOs in respect of agricultural products and foodstuffs except spirits and wines as in the case of the latter two types, *locus standi* for natural and legal persons would be provided on the basis of secondary EU law. Whether challenging IGOs in relation to spirits and wines would be really different from the both above cases remains to be seen, if and when such cases come before the General Court or the CJEU.

64 Art. 2 (2) 2006 Foodstuffs Regulation.

65 Differently from IGOs in relation to other agricultural products and foodstuffs products: apparently in relation to spirits (Art. 15 (1) the 2008 Spirits Regulation) and aromatised wines (Art. 10 (1) (a) 2014 Aromatised Wines Regulation); explicitly in relation to other agricultural products and foodstuffs (Art. 93 (2) CMO Regulation).

66 This is testified to both by the fact that the Quality Schemes Regulation does not explicitly provide for the possibility and the lack of corresponding provision in the Quality Schemes Regulation as reflected in Art. 2 (2) 2006 Foodstuffs Regulation (see Annex II Quality Schemes Regulation).