

EUROPEAN COMMUNITIES

Council Regulation on geographical indications and designations of origin

Council Regulation (EEC) No 2081/92 of 14 July 1992 on protection of geographical indications and designations of origin for agricultural products and foodstuffs

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Preamble

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the production, manufacture and distribution of agricultural products and foodstuffs play an important role in the Community economy;

Whereas, as part of the adjustment of the common agricultural policy the diversification of agricultural production should be encouraged so as to achieve a better balance between supply and demand on the markets; whereas the promotion of products having certain characteristics could be of considerable benefit to the rural economy, in particular to less-favoured or remote areas, by improving the incomes of farmers and by retaining the rural population in these areas;

Whereas, moreover, it has been observed in recent years that consumers are tending to attach greater importance to the quality of foodstuffs rather than to quantity; whereas this quest for specific products generates a growing demand for agricultural products or foodstuffs with an identifiable geographical origin;

Whereas in view of the wide variety of products marketed and of the abundance of information concerning them provided, consumers must, in order to be able to make the best choice, be given clear and succinct information regarding the origin of the product;

Whereas the labelling of agricultural products and foodstuffs is subject to the general rules laid down in Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs; whereas, in view of their specific nature, additional special provisions should be adopted for agricultural products and foodstuffs from a specified geographical area;

Whereas the desire to protect agricultural products or foodstuffs which have an identifiable geographical origin has led certain Member States to introduce 'registered designations of origin'; whereas these have proved successful with producers, who have secured higher incomes in return for a genuine effort to improve quality, and with consumers, who can purchase high quality products with guarantees as to the method of production and origin;

Whereas, however, there is diversity in the national practices for implementing registered designations of origin and geographical

indications; whereas a Community approach should be envisaged; whereas a framework of Community rules on protection will permit the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers' eyes;

Whereas the planned rules should take account of existing Community legislation on wines and spirit drinks, which provide for a higher level of protection;

Whereas the scope of this Regulation is limited to certain agricultural products and foodstuffs for which a link between product or foodstuff characteristics and geographical origin exists; whereas, however, this scope could be enlarged to encompass other products or foodstuffs;

Whereas existing practices make it appropriate to define two different types of geographical description, namely protected geographical indications and protected designations of origin;

Whereas an agricultural product or foodstuff bearing such an indication must meet certain conditions set out in a specification;

Whereas to enjoy protection in every Member State geographical indications and designations of origin must be registered at Community level; whereas entry in a register should also provide information to those involved in trade and to consumers;

Whereas the registration procedure should enable any person individually and directly concerned in a Member State to exercise his rights by notifying the Commission of his opposition;

Whereas there should be procedures to permit amendment of the specification, after registration, in the light of technological progress or withdrawal from the register of the geographical indication or designation of origin of an agricultural product or foodstuff if that product or foodstuff ceases to conform to the specification on the basis of which the geographical indication or designation of origin was granted;

Whereas provision should be made for trade with third countries offering equivalent guarantees for the issue and inspection of geographical indications or designations of origin granted on their territory;

Whereas provision should be made for a procedure establishing close cooperation between the Member States and the Commission through a Regulatory Committee set up for that purpose,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down rules on the protection of designations of origin and geographical indications of agricultural products intended for human consumption referred to in Annex II to the Treaty and of the foodstuffs referred to in Annex I to this Regulation and agricultural products listed in Annex II to this Regulation.

However, this Regulation shall not apply to wine products or to spirit drinks.

Annex I may be amended in accordance with the procedure set out in Article 15.

2. This Regulation shall apply without prejudice to other specific Community provisions.

3. Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations shall not apply to the designations of origin and geographical indications covered by this Regulation.

Article 2

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;

(b) geographical indication: 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
- which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.

3. Certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of

paragraph 2(a) shall also be considered as designations of origin.

4. By way of derogation from Article 2(a), certain geographical designations shall be treated as designations of origin where the raw materials of the products concerned come from a geographical area larger than or different from the processing area, provided that:

- the production area of the raw materials is limited,
- special conditions for the production of the raw materials exist, and
- there are inspection arrangements to ensure that those conditions are adhered to.

5. For the purposes of paragraph 4, only live animals, meat and milk may be considered as raw materials. Use of other raw materials may be authorized in accordance with the procedure laid down in Article 15.

6. In order to be eligible for the derogation provided for in paragraph 4, the designations in question must be or have already been recognized as designations of origin with national protection by the Member State concerned, or, if no such scheme exists, have a proven, traditional character and an exceptional reputation and renown.

7. In order to be eligible for the derogation provided for in paragraph 4, applications for registration must be lodged within two years of the entry into force of this Regulation.

Article 3

1. 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.

Where, following the procedure laid down in Articles 6 and 7, an application of registration is rejected because a name has become generic, the Commission shall publish that decision in the Official Journal of the European Communities.

2. A name may not be registered as a designation of origin or a geographical indication where it conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the public as to the true origin

of the product.

3. Before the entry into force of this Regulation, the Council, acting by a qualified majority on a proposal from the Commission, shall draw up and publish in the Official Journal of the European Communities a non-exhaustive, indicative list of the names of agricultural products or foodstuffs which are within the scope of this Regulation and are regarded under the terms of paragraph 1 as being generic and thus not able to be registered under this Regulation.

Article 4

1. To be eligible to use a protected designation of origin (PDO) or a protected geographical indication (PGI) an agricultural product or foodstuff must comply with a specification.

2. The product specification shall include at least:

(a) the name of the agricultural product or foodstuffs, including the designation of origin or the geographical indication;

(b) a description of the agricultural product or foodstuff including the raw materials, if appropriate, and principal physical, chemical, microbiological and/or organoleptic characteristics of the product or the foodstuff;

(c) the definition of the geographical area and, if appropriate, details indicating compliance with the requirements in Article 2(4);

(d) evidence that the agricultural product or the foodstuff originates in the geographical area, within the meaning of Article 2(2)(a) or (b), whichever is applicable;

(e) a description of the method of obtaining the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods;

(f) the details bearing out the link with the geographical environment or the geographical origin within the meaning of Article 2(2)(a) or (b), whichever is applicable;

(g) details of the inspection structures provided for in Article 10;

(h) the specific labelling details relating to the indication PDO or PGI, whichever is applicable, or the equivalent traditional national indications;

(i) any requirements laid down by Community and/or national provisions.

Article 5

1. Only a group or, subject to certain conditions to be laid down in accordance with the procedure provided for in Article 15, a natural or legal person, shall be entitled to apply for registration.

For the purposes of this Article, 'Group' means any association, irrespective of its legal form or composition, of producers and/or processors working with the same agricultural product or foodstuff. Other interested parties may participate in the group.

2. A group or a natural or legal person may apply for registration only in respect of agricultural products or foodstuffs which it produces or obtains within the meaning of Article 2(2)(a) or (b).

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.

5. The Member State shall check that the application is justified and shall forward the application, including the product specification referred to in Article 4 and other documents on which it has based its decision, to the Commission, if it considers that it satisfies the requirements of this Regulation.

If the application concerns a name indicating a geographical area situated in another Member State also, that Member State shall be consulted before any decision is taken.

6. Member States shall introduce the laws, regulations and administrative provisions necessary to comply with this Article.

Article 6

1. Within a period of six months the Commission shall verify, by means of a formal investigation, whether the registration application includes all the particulars provided for in Article 4.

The Commission shall inform the Member State concerned of its findings.

2. If, after taking account of paragraph 1, the Commission concludes that the name qualifies for protection, it shall publish in the Official Journal of the European Communities the name and address of the applicant, the name of the product, the main points of the application, the references to national provisions governing the preparation, production or manufacture of the product and, if necessary, the grounds for its conclusions.

3. If no statement of objections is notified to the Commission in accordance with Article 7, the name shall be entered in a register kept by the Commission entitled 'Register of protected designations of origin and protected geographical indications', which shall contain the names of the groups and the inspection bodies concerned.

4. The Commission shall publish in the Official Journal of the European Communities:

- the names entered in the Register,
 - amendments to the Register made in accordance with Article 9 and 11.
5. If, in the light of the investigation provided for in paragraph 1, the Commission concludes that the name does not qualify for protection, it shall decide, in accordance with the procedure provided for in Article 15, not to proceed with the publication provided for in paragraph 2 of this Article.

Before publication as provided for in paragraphs 2 and 4 and registration as provided for in paragraph 3, the Commission may request the opinion of the Committee provided for in Article 15.

Article 7

1. Within six months of the date of publication in the Official Journal of the European Communities referred to in Article 6(2), any Member State may object to the registration.

2. The competent authorities of the Member States shall ensure that all persons who can demonstrate a legitimate economic interest are authorized to consult the application. In addition and in accordance with the existing situation in the Member States, the Member States may provide access to other parties with a legitimate interest.

3. Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The competent authority shall take the necessary measures to consider these comments or objection within the deadlines laid down.

4. A statement of objection shall be admissible only if it:

- either shows non-compliance with the conditions referred to in Article 2,

- or shows that the proposed registration of a name would jeopardize the existence of an entirely or partly identical name or trade mark or the existence of products which are legally on the market at the time of publication of this regulation in the Official Journal of the European Communities,

- or indicates the features which demonstrate that the name whose registration is applied for is generic in nature.

5. Where an objection is admissible within the meaning of paragraph 4, the Commission shall ask the Member States concerned to seek agreement among themselves in accordance with their internal procedures within three months. If:

(a) agreement is reached, the Member States in question shall communicate to the Commission all the factors which made agreement possible together

with the applicant's opinion and that of the objector. Where there has been no change to the information received under Article 5, the Commission shall proceed in accordance with Article 6(4). If there has been a change, it shall again initiate the procedure laid down in Article 7;

(b) no agreement is reached, the Commission shall take a decision in accordance with the procedure laid down in Article 15, having regard to traditional fair practice and the actual likelihood of confusion. Should it decide to proceed with registration, the Commission shall carry out publication in accordance with Article 6(4).

Article 8

The indications PDO, PGI or equivalent traditional national indications may appear only on agricultural products and foodstuffs that comply with this Regulation.

Article 9

The Member State concerned may request the amendment of a specification, in particular to take account of developments in scientific and technical knowledge or to redefine the geographical area.

The Article 6 procedure shall apply *mutatis mutandis*.

The Commission may, however, decide, under the procedure laid down in Article 15, not to apply the Article 6 procedure in the case of a minor amendment.

Article 10

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. They shall inform the Member State of the measures taken in carrying out their inspections. The parties concerned must be notified of all decisions taken.

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.

Article 11

1. Any Member State may submit that a condition laid down in the product specification of an agricultural product or foodstuff covered by a protected name has not been met.

2. The Member State referred to in paragraph 1 shall make its submission to the Member State concerned. The Member State concerned shall examine the complaint and inform the other Member State of its findings and of any measures taken.

3. In the event of repeated irregularities and the failure of the Member States concerned to come to an agreement, a duly substantiated application must be sent to the Commission.

4. The Commission shall examine the application by consulting the Member States concerned. Where appropriate, having consulted the committee referred to in Article 15, the Commission shall take the necessary steps. These may include cancellation of the registration.

Article 12

1. Without prejudice to international agreements, this Regulation may apply to an agricultural product or foodstuff from a third country provided that:

- the third country is able to give guarantees identical or equivalent to those referred to in Article 4,
- the third country concerned has inspection arrangements equivalent to those laid down in Article 10,
- the third country concerned is prepared to provide protection equivalent to that available in the Community to corresponding agricultural products or foodstuffs coming from the Community.

2. If a protected name of a third country is identical to a Community protected name, registration shall be granted with due regard for local and traditional usage and the practical risks of confusion.

Use of such names shall be authorized only if the country of origin of the product is clearly and visibly indicated on the label.

Article 13

1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;

(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;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the public as to the true origin of the product.

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.

2. However, Member States may maintain national measures authorizing the use of the expressions referred to in paragraph 1(b) for a period of not more than five years after the date of publication of this Regulation,

provided that:

- the products have been marketed legally using such expressions for at least five years before the date of publication of this Regulation,
- the labelling clearly indicates the true origin of the product.

However, this exception may not lead to the marketing of products freely on the territory of a Member State where such expressions are prohibited.

3. Protected names may not become generic.

Article 14

1. Where a designation of origin or geographical indication is registered in accordance with this Regulation, the application for registration of a trade mark corresponding to one of the situations referred to in Article 13 and relating to the same type of product shall be refused, provided that the application for registration of the trade mark was submitted after the date of the publication provided for in Article 6(2).

Trade marks registered in breach of the first subparagraph shall be declared invalid.

This paragraph shall also apply where the application for registration of a trade mark was lodged before the date of publication of the application for registration provided for in Article 6(2), provided that that publication occurred before the trade mark was registered.

2. With due regard for Community law, use of a trade mark corresponding to one of the situations referred to in Article 13 which was registered in good faith before the date on which application for registration of a designation of origin or geographical indication was lodged may continue notwithstanding the registration of a designation of origin or geographical indication, where there are no grounds for invalidity or revocation of the trade mark as provided respectively by Article 3(1)(c) and (g) and Article 12(2)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.

3. A designation of origin or geographical indication shall not be registered where, in the light of a trade mark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.

Article 15

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on

the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 16

Detailed rules for applying this Regulation shall be adopted in accordance with the procedure laid down in Article 15.

Article 17

1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.

3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.

Article 18

This Regulation shall enter into force twelve months after the date of its publication in the Official Journal of the European Communities. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 July 1992.

ANNEX I Foodstuffs referred to in Article 1(1)

- Beer,
- Natural mineral waters and spring waters,
- Beverages made from plant extracts,
- Bread, pastry, cakes, confectionery, biscuits and other baker's wares,
- Natural gums and resins.

ANNEX II Agricultural products referred to in Article 1(1)

- Hay
- Essential oils.