

Proposal for a Council Regulation amending Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

(2002/C 181 E/11)

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(Submitted by the Commission on 15 March 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

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,

Having regard to the opinion of the Committee of the Regions,

Whereas:

(1) Annex I to the Treaty establishing the European Community ⁽¹⁾ lists the products covered by Title II of the Treaty.

(2) Council Regulation (EEC) No 2081/92 ⁽²⁾ covers neither viticultural products nor spirit drinks but to plug a gap in the Community's protection provisions wine vinegar should be included in the scope defined in its Article 1.

(3) Annex I to Regulation (EEC) No 2081/92 listing the types of foodstuff that may be registered includes natural mineral and spring waters. Examination of registration applications for these has revealed several difficulties: the use of identical names for different waters and of invented names not covered by the Regulation's provisions, and a general finding that these products are not suitable for registration under the Regulation, notably in view of the implications of Article 13. These difficulties have led to many clashes of interest in the course of work on implementation of the Regulation.

(4) Mineral and spring waters are already the subject of Council Directive 80/777/EEC of 15 July 1980 on approximation of the laws of the Member States relating to exploitation and marketing of natural mineral waters ⁽³⁾. This does not have exactly the same purpose as Regulation (EEC) No 2081/92 but does provide adequate

regulation at Community level. Names of mineral and spring waters should not therefore be registered and this product category should be deleted from Annex I to the Regulation. Some names have already been registered in Commission Regulation (EEC) No 1107/96 of 12 June 1996 on registration of geographical indications and designations of origin under the procedure set in Article 17 of Council Regulation (EEC) No 2081/92 ⁽⁴⁾, and to avoid any injury there should be a five-year transition period after which these names will no longer be on the register specified in Article 6(3) of the latter.

(5) To protect the traditional heritage of Member States' producers, provision should be made for regulating cases of total or partial identity of geographical names. These provisions should cover both names meeting the registration requirements and those not doing so but meeting certain precisely established utilisation requirements.

(6) Article 10 should be amended to refer to standard EN 45011 in such a way that its most recent version is always applicable.

(7) If after showing good reason a group or a natural or legal entity wishes to give up the registration of a geographical indication or denomination of origin it should be deleted from the Community register.

(8) The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement 1994, contained in Annex 1C to the Agreement establishing the World Trade Organisation) contains detailed provisions on the existence, acquisition, scope, maintenance and enforcement of intellectual property rights.

(9) The protection provided by registration under Regulation (EEC) No 2081/92 is open to third countries' names by reciprocity and under equivalence conditions as provided for in Article 12 of that Regulation. That Article should be supplemented so as to guarantee that the Community registration procedure is available to the countries meeting those conditions.

⁽¹⁾ OJ C 340, 10.11.1997, p. 303.

⁽²⁾ OJ L 208, 24.7.1992, p. 1. Regulation last amended by Commission Regulation (EC) No 2796/2000 (OJ L 324, 21.12.2000, p. 26).

⁽³⁾ OJ L 229, 30.8.1980, p. 1. Directive last amended by Directive 96/70/EC (OJ L 299, 23.11.1996, p. 26).

⁽⁴⁾ OJ L 148, 21.6.1996, p. 1. Regulation last amended by Regulation (EC) No 2703/2000 (OJ L 311, 12.12.2000, p. 25).

(10) Article 7 of Regulation (EEC) No 2081/92 specifies how objections are to be made and dealt with. To satisfy the obligation resulting from Article 22 of the TRIPS Agreement it should be made clear that in this matter nationals of WTO member countries are covered by these arrangements and that the provisions in question apply without prejudice to international agreements, as already specified in Article 12. The right of objection should be granted to WTO member countries' nationals with a legitimate interest on the same terms as laid down in Article 7(4). Compliance with these terms must be demonstrated in relation to the territory of the Community, this being the territory in which protection granted under the Regulation applies.

(11) Article 24(5) of the TRIPS Agreement applies not only to trademarks registered or applied for but also those to which rights have been acquired through use before a specified date, notably that of protection of the name in the country of origin. Article 14(2) of Regulation (EEC) No 2081/92 should therefore be amended: the reference date now specified should be changed to the date of protection in the country of origin or of submission of the application for registration of the geographical indication or designation of origin, depending on whether the name falls under the Article 17 or the Article 5 procedure; also in Article 14(1) the reference date should become the date of application instead of the date of first publication.

(12) Since the measures required for implementation of Regulation (EEC) No 2081/92 are measures of general scope as specified in Article 2 of Council Decision 1999/468/EC of 28 June 1999 on procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾, they should be adopted using the regulatory procedure specified in Article 5 of that Decision.

(13) The simplified procedure provided for in Article 17 of Regulation (EEC) No 2081/92 for the registration of names already protected or established by usage in Member States does not provide for any right of objection. For reasons of legal security and transparency, it should be deleted. By the same logic so also should the five-year transition period provided for in Article 13(2) in the case of names registered under Article 17 but without prejudice to exhaustion of that period in regard to the names already registered.

(14) Regulation (EEC) No 2081/92 should therefore be amended as indicated above,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2081/92 is amended as follows:

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

1. Article 1(1) is replaced by:

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

It shall not however apply to wine-sector products, except wine vinegars, or to spirit drinks. This paragraph shall be without prejudice to the application of Regulation (EC) No 1493/1999 on the common organisation of the market in wine.

From the date of entry into force of this Regulation, mineral waters shall no longer be covered by Regulation (EEC) No 2081/92. As a result, at the end of a transitional period of five years from the date of entry into force of this Regulation, names relating to mineral waters already registered shall be removed from the register provided for in Article 6(3) of Regulation (EEC) No 2081/92.

Annexes I and II may be amended using the procedure specified in Article 15.'

2. The last subparagraph of Article 5(5) is deleted.

3. The following Article 5a is added after Article 5:

'Article 5a

If the application concerns a name that also designates a geographical area in another Member State or in a third country recognised under the procedure provided for in Article 12(3), the country in question shall be consulted before any decision is taken.

Homonymous names meeting the requirements of this Regulation may be registered subject to proper account being taken of local and traditional usage and the actual risk of confusion.

Use of such names shall be subject to clear indication of the country of origin on the labelling.'

4. The last subparagraph of Article 10(3) is replaced by:

'To be approved by a Member State for the purposes of this Regulation, private bodies must meet the requirements set in the latest version of standard EN 45011 in force.'

5. The following is added to Article 11(4):

'The action taken shall be notified in the *Official Journal of the European Communities*.'

6. The following Article 11a is added after Article 11:

'Article 11a

The Commission may cancel registration of a name in response to a duly substantiated application by the group concerned transmitted by the country that submitted the original application for registration.

Notice of cancellation shall be given in the *Official Journal of the European Communities*.'

7. In Article 12, the second indent of paragraph 1 is replaced by the following:

'— the third country concerned has inspection arrangements and a right to objection equivalent to those laid down in this Regulation.'

8. In Article 12, the following paragraph is added:

'3. The Commission may examine, in accordance with the procedure laid down in Article 15 and at the request of the country concerned, whether a third country satisfies the equivalence conditions within the meaning of paragraph 1 above as a result of its national legislation. Where the Commission decision is in the affirmative, the procedure set in Article 12a shall apply.'

9. The following Articles 12a to 12d are added after Article 12:

'Article 12a

1. In the case provided for in Article 12(3), if a group or a physical or legal entity as referred to in Article 5(1) and (2) in a third country wishes to have a name registered under this Regulation it shall send a registration application to the authorities in the country in which the geographical area is located. Applications must be accompanied by the specification referred to in Article 4 for each name.

2. If that third country deems the requirements of this Regulation to be satisfied it shall transmit the registration application to the Commission accompanied by:

- (a) a description of the legal provisions and the usage on the basis of which the designation of origin or the geographical indication is protected or established in the country,
- (b) a declaration that the structures provided for in Article 10 are established on its territory, and

(c) other documents on which it has based its assessment.

3. The application and all documents forwarded to the Commission shall be in one of the official Community languages or accompanied by a translation into one of the official Community languages.

Article 12b

1. The Commission shall verify within six months whether the registration request sent by the third country contains all the necessary elements and shall inform the country concerned of its conclusions.

If the Commission:

(a) concludes that the name satisfies the conditions for protection, it shall publish the application in accordance with Article 6(2). Prior to publication the Commission may ask the Committee provided for in Article 15 for its opinion;

(b) concludes that the name does not satisfy the conditions for protection, it shall decide, after consulting the country having transmitted the application, in accordance with the procedure provided for in Article 15, not to proceed with publication as provided for in (a) above.

2. Within six months of the date of publication as provided for in paragraph 1(a), any person with a legitimate concern may object to the application published in accordance with paragraph 1(a) on the following terms: Where the objection comes from a Member State of the European Union or a WTO member, Article 7(1), (2) and (3) or Article 12d respectively shall apply. Where it comes from a third-country national meeting the equivalence conditions of Article 12(3), a duly substantiated statement of objection shall be addressed to the country in which he or she resides or is established, which shall forward it to the Commission.

The statement of objection and all documents forwarded to the Commission shall be in one of the official Community languages or accompanied by a translation into one of the official Community languages.

3. The Commission shall examine admissibility in accordance with the criteria set out in Article 7(4). Those criteria must be demonstrated in regard to the territory of the Community. Where one or more objections are admissible the Commission shall adopt a decision in accordance with the procedure laid down in Article 15 after consulting the country which transmitted the application, taking account of traditional fair usage and the actual risk of confusion on Community territory. If the decision is to proceed with registration the name shall be entered in the register provided for in Article 6(3) and published in accordance with Article 6(4).

4. If the Commission receives no statement of objection it shall enter the name(s) in question in the register provided for in Article 6(3) and publish the name(s) as provided for in Article 6(4).

Article 12c

The group or physical or legal entity referred to in Article 5(1) and (2) may request amendment of the specification for a name registered under Article 12a, in particular to take account of the development of scientific and technical knowledge or to revise the geographical zone.

The procedure in accordance with Articles 12a and 12b shall apply.

However, the Commission may decide, in accordance with the Article 15 procedure, not to apply the procedure provided for in Articles 12a and 12b if the amendment is of a minor nature.

Article 12d

1. Within six months of the date of the notice in the *Official Journal of the European Communities* specified in Article 6(2) relating to a registration application submitted by a Member State, any legitimately concerned natural or legal entity that is a national of a WTO member country or of a third country recognised under the procedure provided for in Article 12(3) may object to the proposed registration by sending a duly substantiated statement to the member country in which they reside or are established, which shall transmit it, made out or translated into a Community language, to the Commission. Member States shall ensure that all persons belonging to WTO member countries or a third country recognised under the procedure provided for in Article 12(3) who can demonstrate a legitimate economic interest are authorised to consult the application.

2. The Commission shall examine the admissibility of objections on the terms of Article 7(4). Admissibility must be demonstrated in regard to the territory of the Community.

3. If an objection is admissible the Commission shall, after consulting the country that transmitted the objection, adopt a decision using the procedure specified in Article 15 that takes account of traditional fair usage and the actual risk of confusion. If the decision is to proceed with registration, publication shall be made in line with Article 6(4).'

10. Article 13 is amended as follows:

(a) Paragraph 2 is deleted.

(b) Paragraph 4 is replaced by the following:

'4. In the case of names for which registration has been applied for under Article 5 or Article 12a, provision may be made for a maximum transitional period of five years under Article 7(5)(b) or under Articles 12b(3) or 12d(3), solely where a statement of objection has been declared admissible on the ground that the registration of the proposed name would jeopardise the existence of an entirely or partly homonymous name or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in Article 6(2).

Such transitional period may be provided for only where undertakings have legally marketed the products in question by using the names in question continuously for at least five years preceding the date of the publication provided for in Article 6(2).'

(c) The following paragraph 5 is added:

'5. The Commission may decide to allow, under the procedure provided for in Article 15, the co-existence of a registered name and a name designating a place in a Member State of the European Union or in a third country recognised under the procedure provided for in Article 12(3) where that name is identical to the registered name, provided that the following conditions are met:

- the identical name has been in legal use on Community territory consistently and equitably for at least 25 years prior to the entry into force of Regulation (EEC) No 2081/92, and
- it is shown that the purpose of its use has not at any time been to profit from the reputation of the registered name and that the public has not been nor could be misled as to the true origin of the product, and
- the problem resulting from the identical names was raised before registration of the name.

The registered name and the identical name concerned may co-exist for a period not exceeding 15 years.

Use of the geographical name concerned shall be authorised only where the country of origin is clearly and visibly indicated on the label.'

11. Article 14 is amended as follows:

(a) Paragraph 1 is replaced by:

'1. Where a designation of origin or geographical indication is registered under this Regulation, any application for registration of a trademark that is for a product of the same type and use of which will engender one of the situations indicated in Article 13 shall be refused if made after the date of submission to the Commission of the application for registration of the designation of origin or geographical indication.

Trademarks registered in breach of the first subparagraph shall be invalidated.'

(b) Paragraph 2 is replaced by:

'2. With due regard to Community law, a trademark the use of which engenders one of the situations indicated in Article 13 and which has been registered, or established by use if that possibility is provided for by the legislation concerned, in good faith within the territory of the Community, before either the date of protection in the country of origin or the date of submission to the Commission of the application for registration of the designation of origin or geographical indication, may continue to be used notwithstanding the registration of a designation of origin or geographical indication, provided that no grounds for its invalidity or revocation exist as specified by Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trademarks ⁽¹⁾ and/or

Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trademark ⁽²⁾.

⁽¹⁾ OJ L 40, 11.2.1989, p. 1.

⁽²⁾ OJ L 11, 14.1.1994, p. 1.'

12. Article 15 is replaced by:

'Article 15

1. The Commission shall be assisted by the Committee on Designations of Origin and Geographical Indications composed of Member States' representatives and chaired by a Commission representative.

2. In cases where this paragraph applies, the regulatory procedure set out in Article 5 of Decision 1999/468/EC shall be used. Article 7(3) of the latter shall apply.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

4. The Committee may examine any other matter put to it by its Chairman on his own initiative or at the request of a Member State's representative.'

13. Article 17 is deleted.

Article 2

This Regulation shall enter into force on the seventh day following 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.