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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 692/2003

of 8 April 2003

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

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 ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Economic and Social Committee ([3]),

Having regard to the opinion of the Committee of the Regions ([4]),

Whereas:

(1) Council Regulation (EEC) No 2081/92 ([5]) covers neither viticultural products nor spirit drinks; however in order to avoid a gap in the Community's protection provisions wine vinegar should be included in the scope defined in Article 1 thereof. To meet the expectations of some producers, it has also proved necessary to extend the list of agricultural products referred to in Annex II to Regulation (EEC) No 2081/92. It is also appropriate to extend the list referred to in Annex I to the said Regulation to include foodstuffs resulting from products in Annex I to the Treaty which have only undergone a slight transformation.

(2) Annex I to Regulation (EEC) No 2081/92 listing the types of foodstuff that may be registered includes natural mineral waters 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 provisions of the said Regulation, and a finding that these products are not suitable for registration under the said Regulation, notably in view of the consequences of Article 13. These difficulties have led to many clashes of interest in the course of work on implementation of the said Regulation.

(3) 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 the exploitation and marketing of natural mineral waters ([6]). Even if that Directive does not have exactly the same purpose as Regulation (EEC) No 2081/92, it does nevertheless provide adequate regulation at Community level; names of mineral and spring waters should not therefore be registered. Mineral and spring waters should therefore be deleted from Annex I to Regulation (EEC) No 2081/92. 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 out in Article 17 of Council Regulation (EEC) No 2081/92 ([7]), and to avoid any injury there should be a transition period until 31 December 2013 after which these names will no longer be on the register specified in Article 6(3) of Regulation (EEC) No 2081/92.

(4) Article 4 of Regulation (EEC) No 2081/92 contains a non-exhaustive list of the information which any product specification should include. In certain cases, so as to preserve the typical characteristics of products or to ensure their traceability or control, packaging must take place in the defined geographical area. The possibility of including provisions relating to packaging in the product specification, when such circumstances are present and are justifiable, should be explicitly provided for.

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

([1]) OJ C 181 E, 30.7.2002, p. 275
([2]) Opinion delivered on 5 December 2002 (not yet published in the Official Journal).
([3]) OJ C 241, 7.10.2002, p. 57.
([4]) Opinion delivered on 31 July 2002 (not yet published in the Official Journal).
([5]) OJ L 208, 24.7.1992, p. 1. Regulation as last amended by Commission Regulation (EC) No 2796/2000 (OJ L 324, 21.12.2000, p. 26).
([6]) OJ L 229, 30.8.1980, p. 1. Directive last amended by Directive 96/70/EC (OJ L 299, 23.11.1996, p. 26).
([7]) 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).

(6) Article 10 should be amended to refer to standard EN 45011 in such a way as to provide for any future amendments.

(7) If after showing good reason a group or a natural or legal person wishes to give up the registration of a geographical indication or designation of origin, that name 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.

(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 provided for in Article 12 of the said Regulation. 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) of the said Regulation. 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 Article 17 or the Article 5 of that Regulation; also, in Article 14(1) thereof the reference date should become the date of application instead of the date of first publication.

(12) The measures necessary for implementation of Regulation (EEC) No 2081/92 should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1].

(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. For reasons of consistency the five-year transition period provided for in Article 13(2) in the case of names registered under Article 17 should also be deleted 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 hereby amended as follows:

1. Article 1(1) shall be replaced by the following:

'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 I to the Treaty and of the foodstuffs referred to in Annex I to this Regulation and the agricultural products referred to in Annex II to this Regulation.

However, this Regulation shall not 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.

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

2. Article 4(2)(e) shall be replaced by the following:

'(e) a description of the method of obtaining the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods as well as information concerning the packaging, if the group making the request determines and justifies that the packaging must take place in the limited geographical area to safeguard quality, ensure traceability or ensure control.'

[1] OJ L 184, 17.7.1999, p. 23.

3. The last subparagraph of Article 5(5) shall be replaced by the following:

'If the application concerns a name that also designates a border geographical area, or a traditional name connected to that geographical area, situated in another Member State or in a third country recognised under the procedure provided for in Article 12(3), the Member State to which the application was sent shall consult the Member State or the third country concerned before transmitting the application.

If, following consultations, the groups or natural or legal persons from the States concerned agree on an overall solution, the States concerned may submit a joint application for registration to the Commission.

Specific provisions may be adopted by the procedure laid down in Article 15.'

4. The following subparagraph shall be added after Article 6(1):

'The Commission shall make public any application for registration, stating the date on which the application was made.'

5. The following paragraph shall be added to Article 6:

'6. If the application concerns a homonym of an already registered name from the European Union or a third country recognised in accordance with the procedure in Article 12(3), the Commission may request the opinion of the Committee provided for in Article 15 prior to registration under paragraph 3 of this Article.

A homonymous name meeting the requirements of this Regulation shall be registered with due regard for local and traditional usage and the actual risk of confusion, in particular:

— a homonymous name which misleads the public into believing that products come from another territory shall not be registered even if the name is accurate as far as its wording is concerned for the actual territory, region or place of origin of the agricultural products or foodstuffs in question;

— the use of a registered homonymous name shall be subject to there being a clear distinction in practice between the homonym registered subsequently and the name already on the register, having regard to the need to treat the producers concerned in an equitable manner and not to mislead consumers.'

6. The following subparagraphs shall be added to Article 10(3):

'The standard or the applicable version of standard EN 45011, whose requirements private bodies must fulfil for approval purposes, shall be established or amended in accordance with the procedure laid down in Article 15.

The equivalent standard or the applicable version of the equivalent standard in the case of third countries recognised pursuant to Article 12(3), whose requirements private bodies must fulfil for approval purposes, shall be established or amended in accordance with the procedure laid down in Article 15.'

7. The following shall be added to Article 11(4):

'Notice of cancellation shall be published in the *Official Journal of the European Union*.'

8. The following Article shall be added after Article 11:

'*Article 11a*

In accordance with the procedure laid down in Article 15, the Commission may cancel the registration of a name in the following cases:

(a) Where the State which submitted the original application for registration checks that a request for cancellation, submitted by the group or by a natural or legal person concerned, is justified and forwards it to the Commission.

(b) For well-founded reasons, where compliance with the specifications laid down for an agricultural product or a foodstuff bearing a protected name can no longer be ensured.

Specific provisions may be adopted by the procedure laid down in Article 15.

Notice of cancellation shall be published in the *Official Journal of the European Union*.'

9. In Article 12, the second indent of paragraph 1 shall be replaced by the following:

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

10. In Article 12, the following paragraph shall be added:

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