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'

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1], as last amended by Commission Regulation (EC) No 2796/2000 [2], and in particular Article 17 thereof,

Whereas:

(1) Under Article 17(1) of Regulation (EEC) No 2081/92, on 21 January 1994 the Greek authorities sent the Commission an application for the registration of the name 'Feta' for a cheese.

(2) The name 'Feta' was registered as a protected designation of origin under 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 [3], as last amended by Commission Regulation (EC) No 546/2002 [4].

(3) The Kingdom of Denmark, the Federal Republic of Germany and the French Republic subsequently brought an action for that registration to be annulled under Article 230 of the Treaty.

(4) In its judgment of 16 March 1999 on Joined Cases C-289/96, C-293/96 and C-299/96, the Court of Justice partly annulled Regulation (EC) No 1107/96 in so far as it registered the name 'Feta' as a protected designation of origin. The Court considered that the Commission 'did not take due account of all the factors which the third indent of Article 3(1) of the basic Regulation required it to take into consideration', emphasising in particular that the Commission had paid insufficient attention to the actual situation in the Member States.

(5) Commission Regulation (EC) No 1070/1999 amending the Annex to Regulation (EC) No 1107/96 [5] accordingly deleted the name 'Feta' from the said Annex and from the register of protected designations of origin and geographical indications.

(6) Next, on 15 October 1999, the Commission sent each of the Member States a detailed questionnaire intended to provide an exhaustive updated picture of the situation in all the Member States with regard to the production and consumption of 'Feta' and the knowledge of the term professed by Community consumers.

(7) With regard to the production of 'Feta' cheese, the Member States were asked to describe the situation as regards the following factors: the existence of national rules or specific codified practices, the conditions in which production was commenced (in particular the objectives sought, whether the initiative was private or public, the markets and the consumer profile targeted), the quantities produced each year, the final destination of the product, and the exact names of the relevant trademarks used.

(8) With regard to the consumption of 'Feta' cheese, the Member States were asked to describe the situation as regards the following factors: the existence of rules on the marketing of this cheese, the quantities consumed each year, the geographic origin of the cheese consumed, and the specific labels present on the market.

(9) With regard to consumer knowledge of the name 'Feta', the Member States were asked to describe the situation as regards the following factors: definitions of this term, in particular in general works such as dictionaries and encyclopaedias, relevant demoscopic studies or surveys, and any other additional information.

(10) The Commission summarised the information received overall and by Member State, and the Member States subsequently made a number of corrections and amendments.

(11) The information shows that in 12 Member States the production of 'Feta' cheese is not governed by specific rules laying down precise definitions of quality, production methods or, where applicable, geographical areas of production. In Greece, production practices for 'Feta' cheese have been codified in increasingly specific terms since 1935, and the definition of the geographical area of production, traditionally based on consistent and equitable practices, was protected in 1988. Legislation on the quality specifications to be complied with in producing 'Feta' cheese has existed in Denmark since 1963 and was in force in the Netherlands between 1981 and 1998. It should also be noted that the term 'Feta' appears in Community rules on export refunds for milk and milk products and the combined customs nomenclature. These rules relate to customs matters alone and seek neither to interpret consumer opinion nor regulate industrial property rights, nor do they have any bearing on the name under which the cheese concerned is actually marketed, which depends exclusively on considerations related to consumer expectations in the various countries of destination concerned.

[1] OJ L 208, 24.7.1992, p. 1.
[2] OJ L 324, 21.12.2000, p. 26.
[3] OJ L 148, 21.6.1996, p. 1.
[4] OJ L 86, 3.4.2002, p. 7.
[5] OJ L 130, 26.5.1999, p. 18.

(12) Production of 'Feta' cheese, as defined in the combined customs nomenclature, is non-existent in Luxembourg and Portugal. It is, or has been, statistically and economically marginal or sporadic in nine other Member States: Italy, Belgium, Finland, Austria, Ireland, Sweden, the United Kingdom, the Netherlands and Spain.

(13) However, production of 'Feta' cheese has been found to be substantial in four Member States. Greece has been producing 'Feta' cheese since ancient times, almost exclusively for the Greek market. Official statistics going back to 1931 indicate an output of 25 000 tonnes, and production has now reached around 115 000 tonnes a year. In Greece, cheese bearing the designation 'Feta' is made exclusively from ewe's milk or from a mixture of ewe's and goat's milk.

(14) Denmark has been producing 'Feta' cheese since the 1930s, almost exclusively for export. No data are available before 1967, when 133 tonnes was produced. Output exceeded 1 000 tonnes in 1971 and, when the Community began granting export refunds on exports of 'Feta' cheese in 1975, output increased tremendously, from 9 868 tonnes in 1975 to a peak of 110 932 tonnes in 1989. Since 1995, output has fallen steadily, and amounted to only 27 640 tonnes in 1998, largely due to a fall in demand from third countries and the gradual reduction in export refunds for this type of cheese. Danish production is almost exclusively made from cow's milk.

(15) France began producing 'Feta' cheese in 1931. No data are available before 1980, when 875 tonnes was produced. From 1988 to 1998 output varied between 7 960 tonnes and 19 964 tonnes. Originally manufactured to meet demand from France's Armenian and Greek communities, 'Feta' cheese is now produced for export, with 77,5 % of output on average going to the other Member States and the rest of the world. The French production is based on the utilisation, principally, of ewe's milk, and to a lesser extent, cow's milk.

(16) Germany has been producing 'Feta' cheese since 1972 (when production of 78 tonnes was recorded). In 1977 production exceeded the 5 000 tonnes mark, just topped 15 000 tonnes in 1980 and reached 24 000 tonnes in 1985, since when it has oscillated between 19 757 and 39 201 tonnes. Originally, the only market was the Balkan immigrant communities within Germany, but exports gradually developed to Middle Eastern countries and the Balkans (mainly owing to export refunds) and to other Member States. German production almost exclusively uses cow's milk.

(17) It should be pointed out that the above figures, which are based on data provided by the Member States on their own output, should be treated as purely indicative since the absence of a specific legislative framework in almost all the Member States, along with the very general definition of the term 'Feta' in the combined customs nomenclature, sometimes leads to rather approximate estimates, and cross-comparisons of responses produce statistically divergent data. Indeed, many Member States find it difficult to distinguish between domestic output and re-exports, which may unduly inflate the figures.

(18) As regards Member States' legislation on the consumption of 'Feta' cheese, as a general rule only the Community and national provisions relating to cheeses in general apply to marketing, presentation and labelling. Only Greece and Denmark have specific detailed legislation on these aspects, while Austria confines the name 'Feta' to Greek products, by virtue of its 1971 bilateral agreement with Greece.

(19) As regards the volume of consumption of 'Feta' in the Community, analysis of the replies given by the Member States shows that a broad estimate calculated by adding the quantities of 'Feta' cheese produced and imported, and subtracting the quantities exported, has proved inadequate in some cases and has even produced anomalous results in others: since it is impossible to take account of existing stocks, quantities re-exported and other factors, the calculation has resulted in theoretically negative consumption in some Member States. Furthermore, 'Feta' cheese as defined in the combined customs nomenclature is not systematically marketed under that name, either because of legal restrictions reserving the use of the term to products that meet certain more specific requirements, or for commercial reasons which tend to prefer distinct names which are recognised by the consumers for whom the cheese is intended. Despite the relative uncertainty caused by this state of affairs, the replies sent by the Member States suggest that when Greece joined the European Community it accounted for some 92 % of Community consumption of 'Feta'. While consumption has gradually increased in the other Member States since then, Greece still accounts for about 73 % of Community consumption of 'Feta'. A breakdown of consumption in each Member State shows that annual consumption of 'Feta' cheese per person in Spain, Luxembourg, Portugal, Italy and the Netherlands is no more than 0,010 kg, or 0,08 % of Community consumption. In Ireland, the United Kingdom, Austria, France, Sweden, Belgium and Finland, annual consumption of 'Feta' cheese per person varies between 0,040 kg and 0,150 kg, or between 0,32 % and 1,22 % of Community consumption. It is 0,290 kg (2,36 %) in Germany and 0,700 kg (5,0 %) in Denmark, as compared to 10,500 kg (85,64 %) in Greece.