

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 food-stuffs ⁽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.

- (20) According to the information sent by the Member States, those cheeses actually bearing the name 'Feta' on Community territory generally make explicit or implicit reference to Greek territory, culture or tradition, even when produced in Member States other than Greece, by adding text or drawings with a marked Greek connotation. The link between the name 'Feta' and Greece is thus deliberately suggested and sought as part of a sales strategy that capitalises on the reputation of the original product, and this creates a real risk of consumer confusion. Labels for 'Feta' cheese not originating in Greece but actually marketed in the Community under that name without making any direct or indirect allusion to Greece are in the minority and the quantities of cheese actually marketed in this way account for a very small proportion of the Community market.
- (21) General reference works such as dictionaries and encyclopaedias, and specialised publications sent in by the Member States, show that the term 'Feta' does not appear in Italian- and Portuguese-language works, while all Greek-, Spanish- and Dutch-language publications refer exclusively to a Greek cheese made from ewe's and goat's milk. Swedish works refer to a cheese of Greek origin made from ewe's and goat's milk, which is now also produced in other Member States from cow's milk, Denmark and Sweden being mentioned in particular. In Danish-language works, reference is made predominantly to a Greek cheese made from ewe's and goat's milk, but also to a cheese made in Denmark and the Balkans, and even without any specific geographical reference. Finnish works refer solely to a Greek cheese or cheese of Greek origin made from ewe's milk or from ewe's milk and goat's milk, with the exception of one work which states no geographical origin. German works refer to a cheese produced in Greece and most of the countries of south-east Europe, and in overseas countries. Fourteen out of the 17 French-language works forwarded refer to a Greek cheese made from ewe's milk and/or goat's milk, while one work refers to a cheese produced in Greece and in the Balkans, one to a cheese of Greek origin widely imitated in Europe, and one to a Greek cheese made from ewe's milk and goat's milk, the production of which has spread to other countries in the same region, and more recently to the rest of Europe and to North America, using cow's milk. Of the English-language works, four refer to a cheese made with ewe's milk, especially in Greece, four others refer to a Greek cheese made from ewe's milk or goat's milk, one refers to a cheese originating in Greece and the Middle East, traditionally made from ewe's milk or goat's milk, but now sometimes also made with cow's milk, two works refer to 'Feta' as a cheese originating in Greece, made from ewe's or goat's milk, now produced in other countries, though still most often as an ingredient in Greek dishes, one work refers to production of 'Feta' in New Zealand, Bulgaria, Yugoslavia, Cyprus, Denmark and Greece, the country of origin, one work refers to a cheese made in Greece and in the Balkans, another refers to a Greek cheese made from ewe's or goat's milk, but made from cow's milk in the United States, and four works suggest that a cheese made by the ancient Greeks was the direct forerunner of the 'Feta' cheese made in Greece today. In all languages, the way the definition of 'Feta' cheese has evolved over time has not diminished the association and identification with Greece.
- (22) All the information forwarded by the Member States was also forwarded to the Scientific Committee, hereinafter referred to as 'the Committee', which issued a unanimous opinion on the matter on 24 April 2001.
- (23) The Committee began by stating that '[...] a designation of origin or geographical indication can be considered as having become the common name of a product only when there is in the relevant territory no significant part of the public concerned that still considers the indication as a geographical indication [...]; as regards the territory where the transformation must have occurred, the situation in the European Community as a whole must be considered, given the Community-wide scope of the Regulation and the consideration of the European Community as comprising a single market. Therefore, it is not possible to consider exclusively or primarily the situation in individual Member States in isolation. Article 3 of the Regulation provides for consideration of the Member State of origin, the Member States of consumption and the other Member States, including pertinent Community and national legislation. [...] As regards the public concerned, the assessment will depend on the kind of product and the public to which that product is addressed. In the present case, the product being a cheese for consumption primarily by the final consumer (but also by commercial purchasers, such as restaurants, food factories, etc.), the general public is relevant. Therefore, it is with regard to the general public that the designation or indication in question must have lost its original geographical meaning. In determining what the general public perception is, both "direct" measurements are relevant, such as opinion polls and other surveys, and "indirect" measurements, such as the level of production and consumption, the kind and nature of labelling employed, the kind and nature of advertising employed with regard to such products, use in dictionaries, etc.'
- (24) Turning to the production of 'Feta' cheese, the Committee noted that production in Greece represents 60 % of total Community production of this cheese, and 90 % of Community production from ewe's and goat's milk; 'Feta' cheese produced from cow's milk represents 34 % of total Community production, and is largely destined for third countries.

- (25) As regards consumption, the Committee stressed that 73 % of consumption of 'Feta' cheese actually takes place in Greece, where annual consumption is 10,5 kg per person, as against 1,76 kg in the rest of the EU. Although the Committee conceded that 'Feta' consumption is certainly much higher than this in Denmark and Germany, it is still 15 times and 36 times lower than in Greece, respectively. According to the Committee, 'Feta' consumption as a proportion of total per capita consumption of cheese is also significant: in Greece in particular 10,5 kg of 'Feta' is consumed per person per year out of an annual consumption of 14 kg of cheese; in Denmark that ratio is 0,7 kg of 'Feta' to 15 kg of cheese; in France, 0,13 kg of 'Feta' to 20 kg of cheese; in Germany, 0,29 kg of 'Feta' to 19 kg of cheese.
- (26) The Committee noted incidentally that 'a significant proportion of production outside Greece is exported to non-member countries and has no influence on the situation of the designation "Feta" in the single market' and that 'the absence of production and consumption in a number of Member States does not affect the generic or non-generic nature of the designation'.
- (27) Turning to the analysis of the relevant national and Community legislation, the Committee observed that 12 Member States do not have specific legislation and the general Community and national rules on cheeses apply to 'Feta'. It noted that Greece has had rules on 'Feta' since 1935 and Denmark since 1963, and that Austria reserves the designation 'Feta' for the Greek product under a bilateral agreement of 1971.
- (28) As regards the methods for marketing 'Feta' cheese in the Community, the Committee noted that the consumer is offered 'two products, with differing compositions and organoleptic characteristics, under the same designation'. The Committee pointed out that labels for 'Feta' cheese not originating in Greece make direct or indirect references to Greece, implying that the term 'Feta' is not used as a 'common name, without any geographical significance, synonymous with white cheese (of ewe's or cow's milk) in brine [...]'; according to the Committee, 'Feta' is 'generally present(ed) as being of Greek origin [...]'.
- (29) The Committee 'concludes unanimously that the designation "Feta" is non-generic, in particular for the following reasons.
- (30) Production and consumption of "Feta" are heavily concentrated in Greece. The products produced in other Member States (Germany, Denmark and France), possibly bearing the name "Feta", are primarily produced from cow's milk, using different technology, and are exported in large quantities to non-member countries. It cannot therefore be concluded that the designation "Feta" is generic, since the original Greek product is dominant on the Community market. It should also be noted that in those Member States that are not significant producers and consumers, the designation "Feta" could not be said to have become generic since the word is not used as a common name. In consumers' perception the name "Feta" always evokes a Greek origin and therefore is not something which has become a common name and hence generic in the Community.
- (31) With regard to the relevant national and Community legislation, the Scientific Committee notes that in the majority of Member States there is no specific legislation or rules for the product concerned. Only Greece and Denmark have specific legislation. The Danish legislation permitting the production of a product called "Danish Feta" differs significantly from the Greek legislation with regard to technical matters (use of ultrafiltered cow's rather than ewe's and goat's milk and the use of additives until 1994). In addition, Denmark has provided no proof that the designation "Feta" had become a common name that could be used with the name of the producing country ("Danish Feta") at the time when that Member State permitted its use (1963). Similarly, no proof of its generic nature has been provided for the subsequent period.
- (32) The fact that the designation "Feta" is used in the common customs nomenclature or in Community legislation on export refunds has no influence on the perception, knowledge and protection in the single market of the designation concerned, since that legislation is not relevant in this context.'
- (33) The Commission has taken note of the advisory opinion of the Scientific Committee. It takes the view that the exhaustive overall analysis of the legal, historical, cultural, political, social, economic, scientific and technical information notified by the Member States or resulting from investigations undertaken or sponsored by the Commission leads to the conclusion that in particular none of the criteria required under Article 3 of Regulation (EEC) No 2081/92 to show that a name is generic have been met, and that consequently the name 'Feta' has not become '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.
- (34) Since the term 'Feta' has not been established as generic, the Commission has verified, in accordance with Article 17(2) of Regulation (EEC) No 2081/92, that the application by the Greek authorities for the name 'Feta' to be registered as a protected designation of origin complies with Articles 2 and 4 thereof.

- (35) The name 'Feta' is a traditional non-geographical name within the meaning of Article 2(3) of Regulation (EEC) No 2081/92. The terms 'region' and 'place' mentioned in that provision may be interpreted only from a geomorphological and non-administrative viewpoint, in so far as the natural and human factors inherent in a given product are likely to transcend administrative borders. Under the above Article 2(3), however, the geographical area inherent in a designation may not cover an entire country. In the case of the name 'Feta', it has therefore been noted that the defined geographical area referred to in the second indent of Article 2(2)(a) of Regulation (EEC) No 2081/92 covers only the territory of mainland Greece and the department of Lesbos; all other islands and archipelagos are excluded because the necessary natural and/or human factors do not apply there. Moreover, the administrative definition of the geographical area has been refined and developed, since the product specification submitted by the Greek authorities contains mandatory cumulative requirements: in particular, the area of origin of the raw material has been substantially limited since the milk used to produce 'Feta' cheese must come from ewes and goats of local breeds reared traditionally, whose feed must be based on the flora present in the pastures of eligible regions.
- (36) The geographical area covered by the administrative definition and meeting the requirements of the product specification is sufficiently uniform to meet the requirements of Articles 2(2)(a) and 4(2)(f) of Regulation (EEC) No 2081/92. Extensive grazing and transhumance, central to the method of keeping the ewes and goats used to provide the raw material for making 'Feta' cheese, are the result of an ancestral tradition allowing adaptation to climate changes and their impact on the available vegetation. This has led to the development of small native breeds of sheep and goats which are extremely tough and resistant, fitted for survival in an environment that offers little food in quantitative terms but, in terms of quality, is endowed with an extremely diversified flora, thus giving the finished product its own specific aroma and flavour. The interplay between the above natural factors and the specific human factors, in

particular the traditional production method, which requires straining without pressure, has thus given 'Feta' cheese its remarkable international reputation.

- (37) Since the product specification submitted by the Greek authorities includes all the information required under Article 4 of Regulation (EEC) No 2081/92, and the formal analysis of that specification has not revealed any obvious error of assessment, the name 'Feta' should be registered as a protected designation of origin.
- (38) Regulation (EC) No 1107/96 should therefore be amended accordingly.
- (39) The Committee, provided for in Article 15 of Regulation (EEC) No 2081/92, has not delivered an opinion within the time limit set by its Chairman. According to the fourth paragraph of Article 15 of Regulation (EEC) No 2081/92, the Commission has transmitted the proposal to the Council. Since the Council has not acted within the three-month time limit provided for in the fifth paragraph of Article 15 of the same Regulation (EEC) No 2081/92, the proposed measures are to be adopted by the Commission,

HAS ADOPTED THIS REGULATION:

Article 1

1. The name 'Φέτα' (Feta) shall be included in the register of protected designations of origin and geographical indications provided for in Article 6(3) of Regulation (EEC) No 2081/92 as a protected designation of origin (PDO).
2. The name 'Φέτα' shall be added to part A of the Annex to Regulation (EC) No 1107/96 under the heading 'Cheeses', 'Greece'.

Article 2

This Regulation shall enter into force on the day 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 October 2002.

For the Commission

Franz FISCHLER

Member of the Commission