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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.'

11. The following Articles shall be added after Article 12:

Article 12a

1. In the case provided for in Article 12(3), if a group or a natural or legal person 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.

If the application concerns a name that also designates a border geographical area or a traditional name connected to that geographical area in a Member State, the third country to which the application was sent shall consult the Member State 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 said States may submit a joint application for registration to the Commission.

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

2. If the third country referred to in paragraph 1 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).

2. Within six months of the date of publication as provided for in paragraph 1(a), any natural or legal person with a legitimate interest may object to the application published in accordance with paragraph 1(a) on the following terms:

- (a) 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;
- (b) where the objection comes from a third country meeting the equivalence conditions of Article 12(3), a duly substantiated statement of objection shall be addressed to the country in which the abovementioned natural or legal person 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 and 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 natural or legal person referred to in Article 5(1) and (2) may request amendment of the specification for a name registered under Articles 12a and 12b, 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 12c 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 Union* specified in Article 6(2) relating to a registration application submitted by a Member State, any natural or legal person that has a legitimate interest and is from a WTO member country or 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 country in which it resides or is established, which shall transmit it, made out or translated into a Community language, to the Commission. Member States shall ensure that any person from a WTO member country or a third country recognised under the procedure provided for in Article 12(3) who can demonstrate a legitimate economic interest is authorised to consult the application.

2. The Commission shall examine the admissibility of objections in accordance with the criteria laid down in Article 7(4). These criteria must be proved and assessed with 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, taking account of traditional and fair usage and the actual risk of confusion. If the decision is to proceed with registration, publication shall be made in accordance with Article 6(4).'

12. Article 13 shall be amended as follows:

(a) Paragraph 4 shall be 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 Article 12b(3) or Article 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).'

(b) The following paragraph shall be added:

'5. Without prejudice to the application of Article 14, the Commission may decide to allow, under the procedure provided for in Article 15, the coexistence

of a registered name and an unregistered name designating a place in a Member State 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 unregistered name has been in legal use 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 unregistered name concerned may co-exist for a period not exceeding a maximum of fifteen years, after which the unregistered name shall cease to be used.

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

13. Article 14 shall be amended as follows:

(a) Paragraph 1 shall be replaced by the following:

'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 shall be replaced by the following:

'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 applied for, 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 trade marks (*) and/or Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (**).

(*) OJ L 40, 11.2.1989, p. 1.

(**) OJ L 11, 14.1.1994, p. 1.

14. Article 15 shall be replaced by the following:

'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. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

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.'

15. Article 13(2) and Article 17 shall be deleted. However, the provisions of these Articles shall continue to apply to registered names or to names for which a registration application was made by the procedure provided for in Article 17 before this Regulation entered into force.

16. Annexes I and II shall be replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

Without prejudice to point 16 of Article 1, Articles 5 and 17 shall continue to apply to applications for the registration of names of natural mineral and spring waters where applications for registration were made before this Regulation came into force.

Those natural mineral and spring waters which have already been registered and those which might possibly be registered by virtue of the application of the second paragraph shall continue to appear in the register provided for in Article 6(3) of Regulation (EEC) No 2081/92 and to benefit from the protection accorded by that Regulation until 31 December 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 8 April 2003.

For the Council

The President

G. DRYS

*ANNEX I**'ANNEX I*

Foodstuffs referred to in Article 1(1):

- Beer
- Beverages made from plant extracts
- Bread, pastry, cakes, confectionery and other baker's wares
- Natural gums and resins
- Mustard paste
- Pasta.'

*ANNEX II**'ANNEX II*

Agricultural products referred to in Article 1(1)

- Hay
 - Essential oils
 - Cork
 - Cochineal (raw product of animal origin)
 - Flowers and ornamental plants
 - Wool
 - Osier.'
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