COUNCIL REGULATION (EC) No 535/97

of 17 March 1997

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 43 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),

Whereas Article 13 (2) of Regulation (EEC) No 2081/92 (4) provides for a transitional period of up to five years from the publication of that Regulation during which the Member States may maintain national measures authorizing the use of the expressions referred to in paragraph 1 (b) of that Article under certain conditions; whereas the said Regulation was published on 24 July 1992; whereas the transitional period will accordingly expire on 25 July 1997;

Whereas the first proposal for registration of geographical indications and designations of origin was submitted to the Council only in March 1996 whereas the greater part of the five-year transitional period had already passed; whereas, in order to maintain the full effect of that transitional period, the date of commencement of the five-year period should be amended to start on the date of registration of the names; whereas provision should also be made for the transitional period also to apply to point (a) of Article 13 (1) of Regulation (EEC) No 2081/92, given that the prohibition provided for in that point may overlap that provided for in point (b) of the same paragraph;

Whereas the transitional period should apply only to names registered under Article 17 of Regulation (EEC) No 2081/92, since the granting of this adjustment period should not prejudice producers with regard to existing names already used in the Member States;

Whereas it takes some time to process an application for registration of a name as a protected geographical indication or a protected designation of origin under Regulation (EEC) No 2081/92; whereas Member States should be allowed to grant temporary national protection pending a Community decision on the registration of a name; whereas, in order to settle any conflicts that may arise between producers in a Member State, the Member State concerned may, if necessary, allow a national transitional period that would subsequently have to be confirmed by a Community decision; whereas the consequences of the above national measures must be borne by the Member State which introduced them; whereas, lastly, the said measures must not constitute a barrier to intra-Community trade;

Whereas a transitional period of five years may be laid down on a case-by-case basis for names, registration of which has been applied for under Article 5 of Regulation (EEC) No 2081/92, but solely under Article 7 (5) (b) of that Regulation and on certain grounds,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

   'Annexes I and II may be amended in accordance with the procedure set out in Article 15.'

2. In Article 5 (5) the following text shall be inserted after the first subparagraph:

   'That Member State may, on a transitional basis only, grant on the national level a protection in the sense of the present Regulation to the name forwarded in the manner prescribed, and, where appropriate, an adjustment period, as from the date of such forwarding; these may also be granted transitionally subject to the same conditions in connection with an application for the amendment of the product specification.

   Such transitional national protection shall cease on the date on which a decision on registration under this Regulation is taken. When that decision is taken, a period of up to five years may be allowed for adjustment, on condition that the undertakings concerned have legally marketed the products in question, using the names concerned continuously, for at least five years prior to the date of the publication provided for in Article 6 (2).

   The consequences of such national protection, where a name is not registered under this Regulation, shall be the sole responsibility of the Member State concerned.

(1) OJ No C 241, 20. 8. 1996, p. 7.
(2) OJ No C 33, 3. 2. 1997.
(3) OJ No C 30, 30. 1. 1997, p. 39.
(4) OJ No L 208, 24. 7. 1992, p. 1. Regulation as amended by the 1994 Act of Accession.

The measures taken by Member States under the second subparagraph shall produce effects at national level only; they shall have no effect on intra-Community trade.'

3. The second indent of Article 7 (4) shall be replaced by the following:

'— shows that the registration of the name proposed would jeopardize the existence of an entirely or partly identical name or of a mark 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).'

4. Article 13 (2) shall be replaced by the following:

'2. By way of derogation from paragraph 1 (a) and (b), Member States may maintain national systems that permit the use of names registered under Article 17 for a period of not more than five years after the date of publication of registration, provided that:

— the products have been marketed legally using such names for at least five years before the date of publication of this Regulation,

— the undertakings have legally marketed the products concerned using those names continuously during the period referred to in the first indent,

— the labelling clearly indicates the true origin of the product.

However, this derogation may not lead to the marketing of products freely within the territory of a Member State where such names were prohibited'.

5. The following paragraph shall be added to Article 13:

'4. In the case of names, for which registration has been applied for under Article 5, provision may be made for a transitional period of up to five years under Article 7 (5) (b), solely where a statement of objection has been declared admissible on the grounds that registration of the proposed name would jeopardize the existence of an entirely or partly identical 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 concerned using the names in question continuously for at least five years preceding the date of the publication provided for in Article 6 (2).'

Article 2

This Regulation shall enter into force on the third day following that 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, 17 March 1997.

For the Council

The President

J. VAN AARTSEN