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REPORT FROM THE COMMISSION TO THE COUNCIL

under Article 21 of Regulation (EEC) No 2082/92

on certificates of specific character for agricultural products and foodstuffs on the  
implementation of the Regulation

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## 1. INTRODUCTION

Article 21 of Regulation (EEC) No 2082/92 on certificates of specific character for agricultural products and foodstuffs lays down the following<sup>1</sup> :

'Within five years of the date on which this Regulation enters into force, the Commission shall submit to the Council a report on the application of the Regulation, together with any appropriate proposals.

The report shall cover, in particular, the consequences of applying Articles 9 and 13.'

The purpose of Regulation (EEC) No 2082/92 is to encourage the diversification of agricultural production and promote specific products in a context of rural development. It was established to address a market situation in which producers - having gone to the trouble of complying with a specification - were not protected against misleading imitations; so the Regulation was designed to guarantee fair trade. The consumer might be faced with different products going by the same name and be unable to tell them apart or at least identify the "authentic" one; improper practices had to be prevented. The Regulation was also geared to products for which it could be demonstrated that there was a specific and traditional method of production. Consumers in the Community are showing a renewed interest in products made to "original" recipes, and the Council felt that it was worthwhile

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<sup>1</sup> OJ L 208, 24.7.1992, p. 9.

trying to protect these methods or types of production not only to assist producers making specific products but also to respond to consumer expectations.

The backdrop to these rules was the reform of the common agricultural policy in 1992 and the Community instruments for rural development.

This completely new departure for the Community is a voluntary scheme. It is designed to protect product names via a registration system and covers products that meet specifications setting standards for Community production. Strict checks on compliance with the specification must be carried out when the product is manufactured.

The registered names are not reserved for a certain group of producers but can be used by any producer manufacturing a product in accordance with the specification thus registered, anywhere in the Community.

These ideas are spelt out in the recitals to the Regulation<sup>2</sup>.

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<sup>2</sup> **Recitals to Regulation (EEC) No 2082/92:**

'Whereas the production, manufacture and distribution of agricultural products and foodstuffs play an important role in the Community economy;

Whereas, in the context of the reorientation of the common agricultural policy, the diversification of agricultural production should be encouraged; whereas the promotion of specific products could be of considerable benefit to the rural economy, particularly in less-favoured or remote areas, both by improving the income of farmers and by retaining the rural population;

Whereas, in the context of the completion of the internal market in foodstuffs, economic operators should be provided with instruments which enable them to enhance the market value of their products while protecting consumers against improper practices and guaranteeing at the same time fair trade;

Unlike Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs<sup>3</sup>, this Regulation is not concerned with registering names of products linked with a defined geographical area.

The Regulation 2082 scheme involves a registration procedure which is launched on their own initiative by a group of producers. The first phase of the procedure consists basically in the Commission examining whether the name and the relevant specification comply with the rules; then there is a preliminary publication in the C series of the Official Journal of the European Communities giving an opportunity for objection. Where no objections are received or an objection regarding the

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Whereas, in accordance with the Council resolution of 9 November 1989 on future priorities for relaunching consumer protection policy, account should be taken of increasing consumer demand for greater emphasis on quality and information as regards the nature, method of production and processing of foodstuffs and their special characteristics; whereas, given the diversity of products on the market and the abundance of information concerning them, consumers must, in order to be able to make a better choice, be provided with clear and succinct information regarding the specific characteristics of foodstuffs;

Whereas a voluntary system based on regulatory criteria will help attain these aims; whereas such a system enabling producers to make known the quality of a foodstuff throughout the Community must offer every guarantee so that any references which may be made to it in the trade are substantiated;

Whereas certain producers would like to derive market value from the specific character of agricultural products or foodstuffs because their inherent characteristics distinguish them clearly from similar products or foodstuffs; whereas, in order to protect the consumer, the certified specific character should be subject to inspection;

Whereas, to guarantee that agricultural products and foodstuffs consistently possess the certified specific characteristics, groups of producers must themselves define the said characteristics in a product specification but whereas the rules for approving inspection bodies responsible for checking that the product specification is complied with must be uniform throughout the Community;

Whereas, in order not to create unfair conditions of competition, any producer must be able to use either a registered trade description together with details and, where appropriate, a Community symbol or a trade description registered as such, as long as the agricultural product or foodstuff he produces or processes complies with the requirements of the relevant specification and the inspection body he has selected is approved;

<sup>3</sup> OJ L 208, 24.7.1992, p. 1

designation in question is resolved, the name is registered by means of a Commission regulation.

The two particular provisions to be dealt with in this report are:

**1.1. Article 9: objection procedure**

This is a crucial phase of the registration procedure since not only does it guarantee the rights of legitimately concerned third parties to raise objections on various grounds, it is also a kind of safeguard for the Commission, alerting it in advance to a possible unjustified registration which might damage someone's interests.

Thus, if no objections are notified to the Commission within six months following initial publication in the Official Journal of the European Communities the name is entered in the register of certificates of specific character. However, where there are objections to the application for registration the Commission asks the Member States concerned to come to an agreement between themselves by following the internal procedures.

If an agreement is reached the Member States notify the Commission of all the factors which made agreement possible, together with the opinion of the applicant and that of the objector. If the information concerning the specification has not been changed the Commission enters the name in the register. If there has been a change, the procedure - including publication of the main points of the application - is restarted.

If no agreement is reached the Commission takes a decision on registration in accordance with the Regulatory Committee procedure. If the Commission decides in favour of registration the name is entered in the register.

There are a number of weaknesses in the objection procedure which should be reviewed, particularly the deadline for the amicable settlement procedure and the grounds for objection, which are not currently defined.

## **1.2. Article 13: protection**

Regulation (EEC) No 2082/92 is not covered by intellectual property law. It registers 'generic' names that any Community producer can use if his/her product complies with the registered specification.

There are two levels of protection:

- 'full protection' under Article 13(2) and
- 'partial protection' under Article 13(1).

Producers can opt for one or the other.

To date no product name has qualified for paragraph 2, only paragraph 1 has been applied. This fact has been criticised on several occasions as not offering real protection for the consumer and creating greater confusion rather than removing ambiguities.

In both cases producers can use a Community logo<sup>4</sup>, although so far the logo has not been seen on the few names registered.

Producers also label products registered under Regulation (EEC) No 2082/92 as 'traditional speciality guaranteed'<sup>5</sup>.

A three-year publicity campaign was launched by the Commission in 1995 to make known the Community logo and indication.

By 30 June 1999, 16 applications had been submitted under Regulation (EEC) No 2082/92 for certificates of specific character. Six of the names have been registered under Article 13(1); the rest of the applications are pending. Further applications are being prepared in some Member States.

## 2. QUESTIONNAIRE

In preparing this report and so as to involve the Member States, the Commission staff sent them a questionnaire on 2 July 1998 to ascertain their experience and perceptions of the Community scheme in question.

The questions concerned Articles 9 and 13 of course, but also covered other problems encountered in considering files and applying the procedure laid down.

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<sup>4</sup> Created by Commission Regulation (EEC) No 2515/94, published in colour and accompanied by a graphic manual.

<sup>5</sup> **Recital to Regulation (EEC) No 2082/92:**

'Whereas, given the specific character of such products or foodstuffs, special provisions should be adopted to supplement the labelling rules laid down in Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (5) and whereas, in particular, an expression and, as appropriate, a Community symbol should be devised to accompany the trade description of such products or

The replies from those Member States which responded to the questionnaire<sup>6</sup> have been taken into account in the following points and proposals for improving the scheme.

### **3. IMPLEMENTATION OF REGULATION (EC) No 2082/92**

#### **3.1. General**

Regulation (EEC) No 2082/92 on certificates of specific character was published on 24 July 1992 and entered into force one year later, on 26 July 1993.

At the same time the Council adopted Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, which set a six-month deadline for Member States to notify already existing designations. The authorities concentrated rather on preparing applications within the deadline set. Much additional information was needed before the first registrations came about in 1996.

It is for this reason that very few applications under Regulation (EEC) No 2082/92 have been received by the Commission and they have taken a long time to come in. The first one was notified on 23 May 1995 and the latest on 21 September 1998.

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foodstuffs informing the consumer that it is a product or foodstuff presenting inspected specific characteristics;

<sup>6</sup> Contributions were received from the following Member States: Belgium, Denmark, Germany, Greece, Spain, Netherlands, Austria, Portugal, Finland, Sweden and United Kingdom.

According to information contained in the replies to the questionnaire, other applications are being prepared.

Since the scheme is completely new and unfamiliar compared with that for geographical indications and designations of origin, a certain amount of time was needed to explain it to those concerned, particularly the producers who have to submit registration applications on their own initiative.

Registration applications, in view of the procedure for handling them, represent a great deal of work for the Commission; some dossiers have taken about two years to prepare.

Finally, it should be added that this Regulation, by not confining the product name or its specification to a certain group of producers implies that any producer in the Community is free to use it if his product complies with the conditions laid down and published. This may have discouraged some producers from opting for this scheme: producers often prefer to keep their recipes, which they regard as the key to their method of production, a closely guarded secret.

### **3.2. Designations submitted for registration**

The table below gives details of the fifteen registration applications under Regulation (EEC) No 2082/92. It shows the applicant Member State, the type of product concerned and the stage of the procedure reached by the product in question.

Some Member States indicated in their answers to the questionnaire that other applications are in the pipeline.

The countries and designations concerned are as follows:

- (1) The United Kingdom and Ireland are planning to submit a joint application for registration of the designation 'Aberdeen Angus beef';
- (2) The United Kingdom is also preparing another application for beef;
- (3) Portugal, for its part, is working on applications for the registration of several types of fruit in port.

Article 5(4) of Regulation (EEC) No 2082/92 authorises the use of geographical terms in a name for which registration is sought, but on condition that these terms are not covered by Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs<sup>7</sup>.

This explains why, in some cases, registration applications being prepared contain geographical terms. As mentioned above, these terms - if accepted for registration - can be used by any producer marketing a product meeting the Community specification laid down.

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<sup>7</sup> **Article 5:**

4. The use of geographical terms shall be authorised in a name not covered by 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.'

OJ references of registrations under Regulation (EEC) No 2082/92

Member State submitting application	Name of product	Type of product	Type of protection : Art. 13.(1) or 13(2)	Stage reached	1st publication, OJ C series (conferring right of objection)	Objections received	Registration and 2nd publication in OJ L series
1 IT	Mozzarella	Cheese	13(1)		C 246, 24.8.1996	1	Reg. (EC) No 2527/98, OJ L 317, 26.11.1998, p. 14
2 IT	Miele vergine integrale	Honey	13(1)	Suspended <sup>2</sup>	C 21, 21.1.1997	3	
3 ES	Leche Certificada de Granja	Milk	13(2)		C 405, 24.12.1998		
4 UK	Traditional farmfresh turkey	Turkey	13(1)		C 21, 21.1.97		
5 BE	Lambic, Gueuze Lambic, Gueuze	Beer	13(1)		C 21, 21.1.1997		Reg. (EC) No 954/98, OJ L 133, 7.5.1998, p. 10
6 BE	Kriek, Kriek-Lambic, Framboise Lambic	Beer	13(1)		C 21, 21.1.1997		Reg. (EC) No 954/98, OJ L 130
7 BE	Faro	Beer	13(1)		C 21, 21.1.1997		Reg. (EC) No 2301/97, OJ L 319, 21.11.1997, p. 8*
8 BE	Gueuze Vieille, Gueuze-Lambic Vieille	Beer	13(1)		C 21, 21.1.1997		Reg. (EC) No 2301/97, OJ L 319
9 BE	Vieille Kriek, Vieille Kriek Lambic, etc.	Beer	13(1)		C 21, 21.1.1997	4	Reg. (EC) No 2301/97, OJ L 319
10 ES	Helado Artesano	Ice cream	13(2)		C 31/10/1997		
11 PT	Carne de Bovine Tradicional de Montado	Meat	13(2)	Withdrawn	C 371, 1.12.1998		
12 ES	Serrano	Ham	13(2)				
13 FI	Kalakukko	Pre-cooked meal	13(1)	Under consideration			
14 FI	Sahti	Beverage	13(1)	Under consideration			
15 FI	Karjalanpiirakka	Savoury tart	13(1)	Under consideration			
16 UK	Old Gloucester Beef	Meat	13(2)	Under consideration			

1 Several objections received and no agreement reached. Proposal for a Commission Regulation.

2 Suspended on account of incompatibility with the honey Directive.

3 Several objections received and no agreement reached. The draft Regulation proposed by the Commission as a solution to this application has been withdrawn for the time being from the agenda of the Regulatory Committee.

\* Corrigendum: L 153, 27.5.1998, p. 18.

4 Several objections received and no agreement reached.

### 3.3. Registration procedure: phases and duration

The registration procedure consists of several phases and takes a certain time.

#### Phases

3.3.1. The initiative of applying for registration of a name lies with a group of producers (Article 5). The group defines the product concerned in terms of a specification, the contents of which are prescribed in Article 6 of the Regulation<sup>8</sup>. It is important to justify the elements in the specification, in particular the specific and traditional character of the product (Articles 2 and 4).

The application is sent to the relevant national authority in the Member State concerned; if the application is deemed to fulfil the requirements, the national authority forwards it to the Commission (Article 7).

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<sup>8</sup> **Article 6:**

1. In order to qualify for a certificate of specific character, an agricultural product or foodstuff must comply with a product specification.
2. The product specification shall include at least:
  - the name within the meaning of Article 5, in one or more languages,
  - a description of the method of production, including the nature and characteristics of the raw material and/or ingredients used and/or the method of preparation of the agricultural product or the foodstuff, referring to its specific character,
  - aspects allowing appraisal of traditional character, within the meaning of Article 4(1),
  - a description of the characteristics of the agricultural product or the foodstuff giving its main physical, chemical, microbiological and/or organoleptic characteristics which relate to the specific character,
  - the minimum requirements and inspection procedures to which specific character is subject.

3.3.2. Once the designation and the corresponding specification justifying registration have been examined and deemed satisfactory, the Commission sends a translation of the application to the Member States and publishes the principal elements of the application in the C series of the Official Journal. This publication gives the Member States and persons concerned the opportunity to raise objections within six months (Article 8).

3.3.3. Any objection must be sent to the Commission via the Member States. The Regulation does not list the possible grounds for objections, so where an objection is raised the Commission requests the Member States concerned to reach an agreement. This is known as the amicable settlement procedure, for which a deadline of only three months is allowed (Article 9).

3.3.3.1. If an agreement is reached, the Commission is notified and informed of all the factors on which it was based. The Commission registers the designation if no changes have been made to the application. If the initial specification has been changed, the Commission has to examine the new version, publish it and initiate the objection procedure again.

3.3.3.2. If agreement is not reached, once the Commission is notified, it has to present a proposal to the Regulatory Committee (Article 19) as to whether the designation in question should be registered or not. This proposal is put to the Member States. If the opinion is favourable,

the designation is registered and protection must be applied automatically by all the Member States.

### Duration

Experience has shown that if additional information relating to the specification is not required and no objections are raised to the application, the registration procedure takes about a year.

On the other hand, where specifications are incomplete or not duly justified or objections are raised or a combination of these circumstances arises, the procedure can take over three years. This perhaps explains why producers are not keener to apply.

Out of a total of fifteen registration applications, ten have reached the initial publication stage; one or more objections, not always duly justified, have been raised to all ten. The problems encountered in applying the registration procedure are dealt with in the following point.

## **3.4. Problems encountered**

### *3.4.1. Understanding and perception of the point of the scheme*

Several Member States have said that with it being such an innovative scheme it was difficult for producers to grasp the point of the protection afforded by Regulation (EEC) No 2082/92, particularly in comparison with the system already familiar in some countries of protecting geographical indications and designations of origin. It is true that this scheme:

- does not reserve the registered name for certain producers;

- means that the registered method of production is made public, so that any producer who follows the conditions of production laid down can use the registered name as well as the Community logo and indication.

In most cases producers prefer the option of reserving a name and recipe just for themselves. If they cannot secure an absolute reservation, they do not see the point in having to comply with a binding procedure to obtain a registration.

Unlike Regulation (EEC) No 2081/92, which concerns protection of geographical names as intellectual property, the purpose of Regulation (EEC) No 2082/92 is to lay down a method of production that is not limited to a particular geographical area and is open to any producer. In this way Regulation (EEC) No 2082/92 protects a designation covering a product which, up to the time of registration, has been manufactured in several different ways, i.e. without following a really specific traditional recipe; since the production method followed may have been a complete departure from it, the use of the name may be regarded by consumers as unwarranted or misleading, all the more so as labels tend to feature words such as 'home-made', 'traditional', 'special', etc. Even if these terms are not defined, they add considerable value to the products bearing them in the eyes of the consumer. They encourage consumers to buy them but do not really meet their expectations.

### 3.4.2. *Specification*

#### A. Substantiating specific and traditional character

Regulation (EEC) No 2082/92 enables a 'specific' and 'traditional' product to be identified with a Community guarantee.

The term 'specific character'<sup>9</sup> is defined as follows: 'the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category.'

The reference to the 'traditional' aspect is to be found in Article 4<sup>10</sup>: 'an agricultural product or foodstuff must either be produced using traditional

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<sup>9</sup> **Article 2:**

For the purposes of this Regulation:

- 1) "specific character" shall mean the feature or set of features which distinguishes an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category.

The presentation of an agricultural product or a foodstuff is not regarded as a feature within the meaning of the first subparagraph.

Specific character may not be restricted to qualitative or quantitative composition or to a mode of production laid down in Community or national legislation, in standards set by standardisation bodies or in voluntary standards; however, this rule shall not apply where the said legislation or standard has been established in order to define the specific character of a product;

- 2) "group" shall mean any association, irrespective of its legal form or composition, of producers and/or processors working with the same agricultural product or foodstuff. Other interested parties may participate in the group;
- 3) "certificate of specific character" shall mean recognition by the Community of the specific character of a product by means of its registration in accordance with this Regulation.

<sup>10</sup> **Article 4:**

1. In order to appear in the register referred to in Article 3, an agricultural product or foodstuff must either be produced using traditional raw materials or be characterised by a traditional composition or a mode of production and/or processing reflecting a traditional type of production and/or processing.

2. Registration shall not be permitted in the case of an agricultural product or foodstuff the specific character of which is due

- a) to its provenance or geographical origin;
- b) solely to application of a technological innovation.'

raw materials or be characterised by a traditional composition or a mode of production and/or processing reflecting a traditional type of production and/or processing.'

The 'traditional' aspect was added during the discussions in the Council before the Regulation was adopted, to define the scope of the Regulation more clearly. Not only the specific character of a product but also its traditional character has to be demonstrated.

The Regulation does not specify criteria for assessing these concepts, nor are they defined. It is up to producers, national authorities and Commission staff to apply them in as appropriate and reasonable manner as possible.

When specifications are examined, it is often found that the terms 'specific' and 'traditional' as applied to the product in question are based on the same elements, i.e. these ideas are interchangeable. Consequently, additional information is often needed to clarify and pinpoint the objectives. The only problem is that it takes producers and Member States time to supply this additional information.

#### B. Type of designations notified

Article 5<sup>11</sup> lays down that to be registered the name must:

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<sup>11</sup> Article 5:

'1. To be registered, the name must:

- be specific in itself, or
- express the specific character of the agricultural product or the foodstuff.

- be specific in itself, or
- express the specific character of the product.

There is no problem with the first indent. Cases such as 'Faro' 'Gueuze' and 'Kriek' ( types of beer) or 'Mozzarella' (cheese) are clearly specific names in themselves giving rise to no doubts on the part of producers or the Commission.

Complications arise with the second indent. Designations notified under this option pose a problem because even when attempting to express a specific character the terms used are often too general and cover too wide a range of products on the market. Terms like 'helado artesano' or 'traditional farmfresh turkey' seem to apply to several different products which may all be specific and traditional.

It is also worth pointing out that some of the designations proposed for registration are dismissed by certain Member States as unsubstantiated claims. Moreover, where protection is applied for in only one language, the result is to define and register 'national' rather than 'Community' claims, but this option has already been used to make registration possible.

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2. A name expressing specific character, as referred to in the second indent of paragraph 1, may not be registered if:
    - it refers only to claims of a general nature used for a set of agricultural products or foodstuffs, or to those provided for by specific Community legislation,
    - it is misleading, such as that, in particular, which refers to an obvious characteristic of the product or does not correspond to the specification or to the consumer's expectations in view of the characteristics of the product.
  3. in order to be registered, a specific name as referred to in the first indent of paragraph 1 must be traditional and comply with national provisions or be established by custom.'

It is thus appropriate that the designations submitted should express the specific character of the product in themselves. It is also a fact that the approach taken for one and the same type of product varies, sometimes considerably, from one Member State to another, and it is for this reason that producers ought to take account of the Community context (other associations in other countries involved with the same product) before submitting their applications.

### C. Inspection

Article 14 of Regulation (EEC) No 2082/92 provides for inspection structures to ensure that the products registered meet the criteria laid down in the specifications (conformity check). The inspection may be carried out by a public body or by a private body, in which case compliance with standard EN45011 is required. In any case objectivity and impartiality criteria must be met.

Inspection costs are borne by the users.

This provision is widely criticised. The cost of inspection represents a fairly substantial item of expenditure, at least for small and medium-sized producers. It must be borne in mind that this Regulation is a rural development policy measure.

There is a current trend towards a 'control culture' with meticulous - but also very expensive - monitoring. This is also one of the disincentives for producers to submit registration applications.

On the basis of the information available to the Commission concerning registered designations, the rules by which inspections are organised and carried out are deemed to fulfil the conditions laid down in Article 14. Nor have the Commission staff to date received any complaints on this point, which leads them to think that the inspections are being carried out correctly, particularly from the point of view of objectivity and impartiality.

#### 3.4.3. *Article 9 of Regulation (EEC) No 2082/92: objection procedure*

The advantage of the objection procedure is that it prevents discrimination against third parties and avoids unjustified registration of a designation.

The procedure has three disadvantages, however.

##### 3.4.3.1. Grounds

The first point to be made is that the Regulation does not list specific grounds for objections. This scheme differs from Regulation (EEC) No 2081/92 in that when the Commission receives objections, it has to initiate the amicable settlement procedure, in principle without looking into whether the objections are admissible or justified.

Nonetheless, as experience of the implementation of Article 7 of Regulation (EEC) No 2081/92<sup>12</sup> has shown, it is very useful, if not essential, to have a

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<sup>12</sup> **Article 7(4) of Regulation (EEC) No 2081/92:**

4. A statement of objection shall be admissible only if it:

- either shows non-compliance with the conditions referred to in Article 2,
- shows that the registration of the name proposed would jeopardise 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),

precise and detailed justification for objections. This requires thorough preparation by the parties raising the objection; on the other hand, it enables the Commission staff to undertake a detailed objective examination. The aim should be to initiate the amicable settlement procedure only where there is a real or a potential problem.

If proper reasons for the objection had to be given, this would limit the work involved, reduce the time taken for the procedure and most likely facilitate agreement between the Member States concerned in the course of the procedure.

The Commission will be presenting draft rules of application to close this loophole.

#### 3.4.3.2. Deadline

The deadline set for the amicable settlement procedure is only three months. Only the Member States are involved in this phase, not the Commission. Experience has shown that this deadline is too tight. This is particularly the case where Member States endeavour to reach agreement in writing since correspondence has to be translated before the technical problems can be tackled. This takes time, and in actual fact not a single objection procedure has been settled within the three-month deadline.

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or indicates the features which demonstrate that the name whose registration is applied for is generic in nature.'

Extending the deadline to six months would help. A proposal to that effect may be put forward if the new method proposed below fails to yield the results hoped for.

#### 3.4.3.3. Method

Apart from the question of the deadline, there remains the problem of the method used to reach an agreement. The procedure of exchanging letters has proved to be inappropriate.

Several Member States have suggested that objections should be dealt with by the Regulatory Committee provided for in Article 19 of the Regulation.

The Commission will henceforth make every effort to create and foster a favourable context for achieving results. Meetings between the Member States concerned and the Commission, on the occasion of a Committee meeting, could be held to speed up and improve the amicable settlement procedure.

If this move fails to improve the way the procedure operates, the Commission reserves the right to propose an amendment to the procedure.

#### 3.4.4. *Article 13: protection (paragraphs 1 and 2)*

The principle established by this Regulation is that any producer must be able to use the registered name if his product fulfils the requirements of the corresponding specification.

Article 13<sup>13</sup> provides for two types of protection, however: 'full' protection under paragraph 2 and 'partial' protection under paragraph 1.

3.4.4.1. The protection provided for in Article 13(2) involves protection of the name alone. Under this option the only way of using the registered name is to comply with the specification. There will not be several products manufactured in accordance with different conditions bearing the same name on the market. The registered name will correspond to a single method of production, that which has been registered.

This type of protection is obviously the one which is clearest to the consumer, but it is only possible if it does not emerge from the objection procedure (Article 9) that 'use of the name is lawful, recognised and economically significant for similar agricultural products or foodstuffs'.

So far three applicants have opted for protection under paragraph 2, although registration has not yet taken place<sup>14</sup>. The view of the Commission is that

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<sup>13</sup> **Article 13:**

1. From the date of publication provided for in Article 9(1), the name referred to in Article 5, together with the indication referred to in Article 15 (1), and, where appropriate, the Community symbol referred to in Article 12, shall be reserved for the agricultural product or the foodstuff corresponding to the published product specification.
2. By way of derogation from paragraph 1, the name alone shall be reserved for the agricultural product or the foodstuff corresponding to the published product specification where:
  - a) the group so requested in its application for registration;
  - b) the procedure referred to in Article 9 (2) (b) does not show that use of the name is lawful, recognised and economically significant for similar agricultural products or foodstuffs.'

<sup>14</sup> Examples: Helado artesano (E), Leche Certificada de Granja (E), Jamón Serrano (E) under consideration.

sometimes objections are based on competition considerations rather than fundamental (e.g. technical) reasons. The work and reflection involved take a long time, which is why no registration decision on these designations has been taken yet.

3.4.4.2. Protection under paragraph 1 of Article 13 also involves protection of the name but only when it is associated with the Community logo and the indication 'TSG' (traditional speciality guaranteed). Under this option it will be possible to find on the market the same name being used for products manufactured in a different way. What makes the distinction and enables the specification of the registered product to be identified is the Community logo and indication on the label.

This provision, based on a compromise, enabled the Regulation to be adopted at the time. However, it has been strongly criticised not only by consumer circles but also by producers who fail to see how, when a product has been registered, it is still possible to find a product on the market going by the same name as the registered product but produced in a different way.

Given that protection under paragraph 2 seems to them to be difficult to obtain (for economic reasons) and they regard protection under paragraph 1 to be of little use and also difficult to obtain, producers are not very motivated to take advantage of this scheme.

Some applicants, in order to reach a settlement, have agreed to convert their original applications for protection under paragraph 2 to applications under

paragraph 1, but even in these cases no decisions on registration have so far been reached.

Even under this provision the Member States tend to raise similar objections to those in connection with paragraph 2, again based on considerations of competitiveness rather than on technical grounds. In this case too, therefore, decisions on registration take a long time. These reactions are difficult to understand in view of the flexibility provided for in paragraph 1.

#### **4. CONCLUSIONS: PROPOSALS FOR IMPROVING THE SYSTEM**

Despite the difficulties describe above, interest is starting to be shown in this Regulation. It needs to be kept up and consolidated to secure its acceptance by consumers and producers.

Article 13 needs to be implemented in a more fluid and effective manner by criteria for objection being laid down and the Commission ensuring better cooperation with the Member States.

As set out in points 3.4.2 and 3.4.3 above, improvements are needed on:

- the grounds for objection, in the framework of the rules of application;
- the amicable settlement procedure, by facilitating appropriate contacts and discussions.

The Commission also sees a need to improve consumer awareness of the scheme, and in particular the respective scope of paragraphs 1 and 2 of Article 13.

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