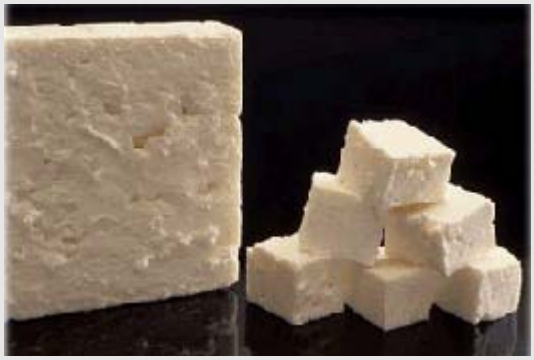
**European Court of Justice, 16 March 1998, Feta 1**



**TRADEMARK RIGHTS**

- **The Commission's own submissions show that, when registering the name 'Feta', it took no account whatsoever of the fact that that name had been used for a considerable time in certain Member States other than the Hellenic Republic.**

87. With respect to those factors, it must nevertheless be observed that the Commission minimised the importance to be attached to the situation existing in the Member States other than the State of origin and considered their national legislation to be entirely irrelevant on the grounds, first, that, as is apparent from paragraph 37 of the judgment in Exportur v LOR SA and Confiserie du Tech SA, cited above, it is appropriate to attach primary importance to the situation existing in the Member State of origin and, second, that the fact that, in other Member States, the name 'Feta' may have been used for the marketing of lawfully produced cheese is no basis for concluding that that name has become generic. (…)

91. As regards the second argument, to the effect that, in the context of the third indent of Article 3(1) of the basic regulation, it is irrelevant that in several Member States other than the State of origin national rules have long existed which allow use of the name 'Feta', it must be borne in mind, first, that, under the second indent of Article 7(4) of the basic regulation, the fact that registration of a name at the request of a Member State might jeopardise the existence of products which are legally on the market constitutes a ground on which a statement of objection from another Member State may be admissible. (…)

95. Second, the finding that Article 7(4) of the basic regulation makes the existence of products which are legally on the market a ground for the admissibility of a statement of objection distinct from the ground that the name whose registrationis applied for is generic, does not necessarily mean that the first of those two circumstances should not be taken into account in the context of the third indent of Article 3(1) of that regulation, whether in relation to the situation existing in Member States other than the State of origin or to the legislation of those States or to an independent factor.

96. On the contrary, in view of that finding it must be stressed that, in the context of procedures for registration of a name of a product under the basic regulation, account must be taken of the existence of products which are legally on the market and have therefore been legally marketed under that name in Member States other than the State of origin by which registration is applied for. (…)

101. It must be concluded that the Commission's own submissions show that, when registering the name 'Feta', it took no account whatsoever of the fact that that name had been used for a considerable time in certain Member States other than the Hellenic Republic.

102. In view of the foregoing considerations, it must be concluded 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.

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**European Court of Justice, 16 March 1998**

(G. C. Rodríguez Iglesias, P. J. G. Kapteyn, G. Hirsch, P. Jann, G. F. Mancini, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet en R. Schintgen (Rapporteur))

JUDGMENT OF THE COURT

16 March 1999 (1)

(Council Regulation (EEC) 2081/92 - Commission Regulation (EC) No 1107/96 - Registration of geographical indications and designations of origin - 'Feta')

In Joined Cases C-289/96, C-293/96 and C-299/96,

Kingdom of Denmark, represented by P. Biering, Head of Division in the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Danish Embassy, 4 Boulevard Royal, applicant in Case C-289/96,

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of the Economy, and A. Dittrich, Regierungsdirektor in the Federal Ministry of Justice, acting as Agents, Postfach 1308, D-53003 Bonn,

applicant in Case C-293/96,

and

French Republic, represented by Kareen Rispal-Bellanger, Deputy Director in the International, Economic and Community Law Directorate of the Ministry of Foreign Affairs, and Gautier Mignot, Foreign Affairs Secretary in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

applicant in Case C-299/96,

v

Commission of the European Communities, represented:

- in Case C-289/96, by J.L. Iglesias Buhigues, Legal Adviser, and H. Støvlbæk, of its Legal Service,
- in Case C-293/96, by J.L. Iglesias Buhigues and U. Wölker, of its Legal Service,
- in Case C-299/96, by J.L. Iglesias Buhigues and G. Berscheid, of its Legal Service,

acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,
defendant,
supported by
Hellenic Republic, represented by D. Papageorgopoulos, Legal Adviser to the State Legal Council (Case C-293/96), I. Chalkias, Deputy Legal Adviser to the State Legal Council (Cases C-289/96 and C-299/96), and I. Galani-Maragkoudaki, Special Deputy Legal Adviser to the Special Department for Community Legal Matters of the Ministry of Foreign Affairs (Cases C-289/96, C-293/96 and C-299/96), acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,
intervener,
APPLICATION for annulment of 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 (OJ 1996 L 148, p. 1) in so far as it registers the designation 'Feta‘ as a protected designation of origin,
THE COURT,
composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, G. Hirsch and P. Jann (Presidents of Chambers), G.F. Mancini, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet and R. Schintgen (Rapporteur), Judges,
Advocate General: A. La Pergola,
Registrar: H. von Holstein, Deputy Registrar,
having regard to the Report for the Hearing,
after hearing oral argument from the parties at the hearing on 16 June 1998, at which the Kingdom of Denmark was represented by J. Mølde, Head of Division in the Ministry of Foreign Affairs, acting as Agent; the Federal Republic of Germany by A. Dittrich; the French Republic by G. Mignot; the Hellenic Republic by D. Papageorgopoulos, I. Chalkias and I. Galani-Maragkoudaki; and the Commission by J.L. Iglesias Buhigues, H. Støvlbæk and G. Berscheid,
after hearing the **Opinion of the Advocate General** at the sitting on 15 September 1998,
gives the following

**Judgment**

1. By applications lodged at the Court Registry on 30 August, 9 September and 12 September 1996 respectively, the Kingdom of Denmark, the Federal Republic of Germany and the French Republic brought actions under Article 173 of the EC Treaty for annulment of 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 (OJ 1996 L 148, p. 1, hereinafter 'the contested regulation‘) in so far as it registers the designation 'Feta‘ as a protected designation of origin (hereinafter 'PDO‘).

2. By three orders of the President of the Court of 4 December 1996, 21 January and 19 February 1997, the Hellenic Republic was granted leave to intervene in the three cases in support of the forms of order sought by the Commission.

3. By order of the President of the Court of 27 November 1997, the three cases were joined for the purposes of the oral procedure and the judgment.

**Legislative background**

4. The first paragraph of Article 1 of the contested regulation, which entered into force on the day of its publication in the Official Journal of the European Communities, which was on 21 June 1996, provides: 'The names listed in the Annex shall be registered as protected geographical indications (PGI) or protected designations of origin (PDO) pursuant to Article 17 of Regulation (EEC) No 2081/92‘. The annex referred to by that provision mentions under the headings 'Cheeses‘ and 'Greece‘ in Part A, entitled 'Products listed in Annex II to the EC Treaty, intended for human consumption‘, 'ÖÝôá (Feta) (PDO)‘.

5. The contested regulation was adopted pursuant to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1, hereinafter 'the basic regulation‘) and in particular Article 17 thereof.

6. The basic regulation, which entered into force on 25 July 1993, states in the seventh recital in the preamble that 'there is diversity in the national practices for implementing registered designations of origin and geographical indications; ... a Community approach should be envisaged; ... a framework of Community rules on protection will permit the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers' eyes‘. It is stated in the twelfth recital that 'to enjoy protection in every Member State geographical indications and designations of origin must be registered at Community level‘.

7. Pursuant to Article 2(2) of the basic regulation:
'For the purposes of this Regulation:
(a) designation of origin: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:
- originating in that region, specific place or country, and
- the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

8. Article 2(3) adds:
'Certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a), shall also be considered as designations of origin.‘

9. Article 3 of the basic regulation provides:

'1. Names that have become generic may not be registered.
For the purposes of this Regulation, a "name that has become generic" means 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.
To establish whether or not a name has become generic, account shall be taken of all factors, in particular:
- the existing situation in the Member State in which the name originates and in areas of consumption,
- the existing situation in other Member States,
- the relevant national or Community laws.
Where, following the procedure laid down in Articles 6 and 7, an application for registration is rejected because a name has become generic, the Commission shall publish that decision in the Official Journal of the European Communities.
2. ...
3. Before the entry into force of this Regulation, the Council, acting by a qualified majority on a proposal from the Commission, shall draw up and publish in the Official Journal of the European Communities a non-exhaustive, indicative list of the names of agricultural products or foodstuffs which are within the scope of this Regulation and are regarded under the terms of paragraph 1 as being generic and thus not able to be registered under this Regulation.'
10. Article 4(1) of the basic regulation provides: 'To be eligible to use a protected designation of origin (PDO) or a protected geographical indication (PGI) an agricultural product or foodstuff must comply with a specification.' According to Article 4(2) the specification includes inter alia the name of the product, including the designation of origin or the geographical indication, a description of the product including the raw materials, if appropriate, and the principal physical, chemical, microbiological and/or organoleptic characteristics of the product, the definition of the geographical area, evidence that the agricultural product or the foodstuff originates in the geographical area, within the meaning of Article 2(2), a description of the method of obtaining the product and the details bearing out the link with the geographical environment or the geographical origin within the meaning of Article 2(2) of the basic regulation.
11. Articles 5 to 7 of the basic regulation lay down a registration procedure, known as 'the normal procedure'.
12. According to Article 5(4), applications for registration are to be sent to the Member State in which the geographical area is located. Under Article 5(5), the Member State is to check that the application is justified and is to forward the application to the Commission, together with, in particular, the product specification.
13. Pursuant to Article 6(1), (2) and (3), within a period of six months the Commission is to verify, by means of a formal investigation, whether the registration application includes all the particulars provided for in Article 4. If the Commission concludes that the name qualifies for protection, it is to publish a notice in the Official Journal of the European Communities. If no statement of objection is notified to the Commission by a Member State or a natural or legal person in accordance with Article 7, the Commission enters the name in a register entitled 'Register of protected designations of origin and protected geographical indications'. Pursuant to Article 6(4), the names entered in the register are then published in the Official Journal of the European Communities.
14. Article 7 of the basic regulation establishes a procedure for objections to registrations. According to Article 7(4), 'A statement of objection shall be admissible only if it:
- either shows non-compliance with the conditions referred to in Article 2,
- or shows that the proposed registration of a name would jeopardise the existence of an entirely or partly identical name or trade mark or the existence of products which are legally on the market at the time of publication of this regulation in the Official Journal of the European Communities,
- or indicates the features which demonstrate that the name whose registration is applied for is generic in nature.'
15. The second indent of that provision was amended by Council Regulation (EC) No 535/97 of 7 March 1997 (OJ 1997 L 83, p. 3) so that, as from the entry into force of that regulation on 28 March 1997, a statement of objection is admissible if it is shown that registration of the name proposed would jeopardise 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)', which is the first publication in the Official Journal of the European Communities referred to in paragraph 13 of this judgment.
16. According to Article 7(5) of the basic regulation:
'Where an objection is admissible within the meaning of paragraph 4, the Commission shall ask the Member States concerned to seek agreement among themselves in accordance with their internal procedures within three months. If:
(a) agreement is reached, the Member States in question shall communicate to the Commission all the factors which made agreement possible together with the applicant's opinion and that of the objector. Where there has been no change to the information received under Article 5, the Commission shall proceed in accordance with Article 6 (4). If there has been a change, it shall again initiate the procedure laid down in Article 7;
(b) no agreement is reached, the Commission shall take a decision in accordance with the procedure laid down in Article 15, having regard to traditional fair practice and of the actual likelihood of confusion. Should it decide to proceed with registration, the Commission shall carry out publication in accordance with Article 6 (4).'
17. Pursuant to Article 13 of the basic regulation:
'1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;
(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as ”style”, ”type”, ”method”, ”as produced in”, ”imitation” or similar;
(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
(d) any other practice liable to mislead the public as to the true origin of the product.
Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to (a) or (b) in the first subparagraph.
2. However, Member States may maintain national measures authorising the use of the expressions referred to in paragraph 1(b) for a period of not more than five years after the date of publication of this Regulation, provided that:
- the products have been marketed legally using such expressions for at least five years before the date of publication of this Regulation,
- the labelling clearly indicates the true origin of the product.
However, this exception may not lead to the marketing of products freely on the territory of a Member State where such expressions are prohibited.
3. Protected names may not become generic.‘
18. In order to take account, in particular, of the fact that the first proposal concerning registration of geographical indications and designations of origin was not submitted to the Council until March 1996, when the major part of the transitional period of five years provided for in Article 13(2) of the basic regulation had expired, Regulation No 535/97 replaced that provision by the following wording:
'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‘.
19. For the adoption of the measures provided for in the basic regulation, Article 15 thereof provides:
'The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.
The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.
If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.
If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.‘
20. Article 17 of the basic regulation, which establishes a registration procedure known as the 'simplified procedure‘, applicable to the registration of names already existing at the date of entry into force of the regulation, provides:
'1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.
2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.
3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.‘
21. When adopting the basic regulation, the Council and the Commission stated in the minutes of the Council meeting first that 'Article 3 ... states that generic names cannot be registered as a protected designation‘ and second that 'where there are agricultural products or foodstuffs already being legally marketed before the making of the regulation which may be the subject of an application for registration, it has been provided for any Member States to object to the registration under the provisions of Article 7 of the regulation‘. They

added that that article 'indicates clearly that the existence of a legally marketed product is in itself grounds for admissible objection and that traditional fair practice and the likelihood for confusion have subsequently to be taken into account before a decision is taken‘. They also stressed that 'this regulation is not intended to prevent the continued marketing of products legally sold within the Community on 30 June 1992, so long as they do not conflict with the criteria relating to traditional fair practice and actual likelihood for confusion‘.

**Factual background**

22. With a view to drawing up a draft non-exhaustive indicative list of names which should be regarded as generic and could not therefore be registered in accordance with the basic regulation - a list which, under Article 3(3) of that regulation, the Council was required to draw up before its entry into force on 25 July 1993 - the Commission asked the Member States in July 1992 to give it the names of the products which they regarded as capable of being recognised as generic names. In March 1995 it sent similar requests to the three new Member States.

23. It is clear from the explanatory memorandum to the proposal for a Council decision drawing up a non-exhaustive, indicative list of the names of agricultural products and foodstuffs regarded as being generic, as provided for in Article 3(3) of Regulation No 2081/92 (hereinafter 'the proposal for a decision‘), which the Commission presented on 6 March 1996 (document COM (96) 38 final), that the Commission sought the cooperation of the Member States in order to have as complete as possible an over-view in an area where, having regard to the considerable private economic interests at stake, it considered it appropriate to adopt a very cautious, neutral and objective approach.

24. In view of the fact that the suggestions which it received from the Member States were varied and lacking in detail, the Commission decided to adopt as possible generic names those which met the following conditions:

'(a) They have been put forward by at least eight Member States.

...

The Member State of origin is a Contracting Party to the International Convention of Stresa [of 1 June 1951 on the use of designations of origin and names of cheeses] and/or has itself included the name in the list sent to the Commission.

...

The names are not protected by international agreements (bilateral or other conventions) in Member States other than the Member State of origin.

...‘.

25.It is also clear from the explanatory memorandum to the proposal for a decision that, as far as the name 'Feta‘ is concerned, the Commission had received, on numerous occasions, strong reactions as to whether or not it was a generic name.

26.It is clear from the documents before the Court, first, that a majority of the Member States had asked the Commission to include the name 'Feta‘ on the list of generic names which it was preparing.

27. Second, that name was protected by a convention between the Republic of Austria and the Kingdom of Greece, concluded on 20 June 1972 under an agreement of 5 June 1970 between those two States relating to the protection of indications of provenance, designations of origin and names of agricultural, craft and industrial products (BGBl. Nos 378/1972 and 379/1972; Österreichisches Patentblatt No 11/1972 of 15 November 1972).

28. Finally, in the meantime the Greek Government had forwarded to the Commission by letter of 21 January 1994 the files relating to the names of which it sought registration as geographical indications and designations of origin under Article 17 of the basic regulation.

29. The file relating to the name 'Feta‘ of which the Hellenic Republic sought registration as a PDO contained information concerning in particular the geographical origin of the raw material used in the manufacture of the product, the natural conditions prevailing in the region where that raw material was produced, the species and breeds of animals whose milk is used for the production of Feta, the qualitative characteristics of that milk, the processes for manufacturing the cheese and its qualitative characteristics.

30. The file also contained the text of Ministerial Order No 313025 of 11 January 1994 recognising the protected designation of origin (PDO) for Feta cheese (hereinafter 'the Order‘).

31. Under Article 1(1) of the Order, 'The name ”Feta” is recognised as a protected designation of origin (PDO) for salted white cheese traditionally produced in Greece, particularly in the regions mentioned in paragraph 2 of this article, from sheep's milk or a mixture of sheep's milk and goats' milk‘.

32. Article 1(2) states that 'The milk used for the manufacture of ”Feta” must come exclusively from the regions of Macedonia, Thrace, Epirus, Thessaly, Central Greece, Peloponnese and Lesbos‘.

33. The other provisions of the Order set out the conditions to be met by milk intended for use in the production of the cheese, the Feta production process, the main characteristics of the cheese, in particular its organoleptic and taste characteristics, and the information which must appear on its packaging.

34. Finally, Article 6(2) prohibits the manufacture, import, export, despatch and marketing under the name 'Feta‘ of cheese not meeting the conditions laid down by the Order.

35. In the explanatory memorandum to the proposal for a decision, the Commission indicated that, in view of all the information received, it was necessary to act with extreme caution in determining whether the name 'Feta‘ had become generic and therefore to gather convincing evidence to back up any decision to be taken.

36. To that end, in April 1994 the Commission arranged for a Eurobarometer survey of 12 800 nationals of the 12 Member States which were then members of the European Community. To justify recourse to that survey, the Commission relied on the consideration that

the basic regulation 'requires for the purpose of declaring a name to be generic that it has become the common name for a product, in other words that it designates the product as such without involving, in the view of the public, any reference to the geographical origin of the product‘.
37. The results of the opinion poll, as set out in the Final Report of 24 October 1994, were as follows:
1. On average, one in five citizens of the European Union has seen or heard the name 'Feta‘. In two States, namely the Hellenic Republic and the Kingdom of Denmark, that name is in fact recognised by almost everyone.
2. Of those who know or recognise the name 'Feta‘, the majority associate it with a cheese and a substantial proportion of the latter say that it is a Greek cheese.
3. Three out of four people who know the name 'Feta‘ state that it evokes a country or region with which the product has some connection.
4. Of those who have already seen or heard the name 'Feta‘, 37.2% consider it a common name whilst 35.2% consider it a product from a particular origin; the remainder expressed no view. In Denmark, a majority (63%) say that it is a common name whereas in Greece 52% regard it as a product from a particular origin.
5. As to whether it is a generic product or a product from a particular origin, the Europeans also have mixed feelings; where those questioned included not only those who are immediately familiar with the name 'Feta‘ but also those who have been told that it is a cheese, 50% say that it is a product from a particular origin and 47% say that it is a common name.
38. In view of the foregoing and of the United Kingdom and German case-law to the effect that it cannot be inferred from the fact that a name is not known or is not widely known that it is generic, the Commission concluded that 'it would appear that the name ”Feta” has not become the generic name of a product but that it continues to connote Greek origin for most of those who know it‘.
39. The Commission also submitted the Feta file to the Scientific Committee for Designations of Origin, Geographical Indications and Certificates of Specific Character established by Commission Decision 93/53/EEC of 21 December 1992 (OJ 1993 L 13, p. 16). According to Article 2 of that decision, the task of that committee, which is made up of qualified experts with legal or agricultural backgrounds, and particularly with knowledge of intellectual property rights, is to examine, at the request of the Commission, all technical problems relating to the application of the basic regulation, including those relating to the generic nature of the name and the factors to be taken into account when defining geographical indications and designations of origin of agricultural products and foodstuffs.
40. In its opinion of 15 November 1994, the Scientific Committee expressed the view, by four votes in favour and three against, having regard in particular to the information supplied, that the name 'Feta‘ met the conditions for registration under the basic regulation, more particularly Article 2(3) thereof.
41. In the same opinion, the Scientific Committee unanimously concluded, on the basis of the documentation submitted to it, that the name 'Feta‘ for Greek cheese was not generic within the meaning of Article 3(1) of the basic regulation. It stated that 'the non-generic nature of the name ”Feta” is an independent point and is without prejudice to examination of the situation of products legally on the market within the meaning of Article 13(2) of Regulation (EEC) No 2081/92‘.
42. It is clear from the explanatory memorandum to the proposal for a decision that, in consequence, having regard to the results of the Eurobarometer survey and the opinion of the Scientific Committee, the Commission finally considered that the name 'Feta‘ had not become generic within the meaning of Article 3 of the basicregulation and did not therefore include it in the non-exhaustive indicative list of names that have become generic presented to the Council.
43. That list, as set out in Article 1 of the proposal for a decision, contained the following names: Brie, Camembert, Cheddar, Edam, Emmentaler, Gouda. However, it was not adopted since the majority needed for its adoption by the Council was not attained.
44. At the same time, the Commission had presented to the committee provided for in Article 15 of the basic regulation a proposal for a regulation including a list of the names of which the Member States has requested registration as geographical indications and designations of origin under Article 17 of that regulation. That list included the name 'Feta‘, the registration of which as a PDO had been requested by the Greek Government.
45. The committee provided for in Article 15 of the basic regulation did not give a decision on that proposal within the period appointed and the Commission therefore submitted it to the Council on 6 March 1996, as provided for by the fourth paragraph of Article 15 of that regulation.
46. Since the Council did not give a decision on the proposal within the period of three months laid down in the fifth paragraph of that article, the Commission finally adopted the contested regulation itself on 12 June 1996.
47. It is common ground that the latter regulation registered the name 'Feta‘ as a PDO under Article 2(3) of the basic regulation, which applies to traditional names, geographical or otherwise.
**Pleas and arguments of theparties**
48. In support of their actions, the three applicant Governments allege infringement of Article 17(2) of the basic regulation, in conjunction with Articles 2(3) and 3(1).
49. Essentially they claim, first, that, contrary to the requirements of Article 17(2) of the basic regulation, the name 'Feta‘ does not meet the conditions for registration as a PDO since the product to which it refers does not originate in a region or a specific place within the meaning of Article 2(3) of the basic regulation and does not display any quality or characteristics which are essentially or exclusively due to the geographical

environment, with its inherent natural and human factors, of the region or place in which it originates, as required by Article 2(3) by reference to Article 2(2) of the same regulation.
50. They submit, also, that the name 'Feta‘ constitutes a generic name within the meaning of the second and third indents of Article 3(1) of the basic regulation sothat, in any event, Article 17(2) and the first indent of Article 3(1) preclude its registration.
51. The Danish and German Governments also allege infringement of Articles 5 and 30 of the EC Treaty and of the principles of proportionality and non-discrimination.
52. Since the prohibition of registration of names which are or have become generic, as provided for in Articles 17 and 3 of the basic regulation, is general and subject to no reservation, so that it can equally be applied to names that fulfil the conditions laid down elsewhere for them to be regarded as geographical indications and designations of origin, it is necessary to examine first the plea that the name 'Feta‘ is generic.
The plea alleging infringement of Article 17(2) of the basic regulation in conjunction with Article 3(1) thereof
**Arguments of the applicant Governments**
53. The applicants state, first, that the term 'Feta‘ derives etymologically from the Italian word 'fetta‘, which simply means 'slice‘.
54. According to the French Government, Feta corresponds to the most rudimentary method of cheese-making and emerged long ago, under various names, in all the Balkan countries. Moreover, the name 'Feta‘ has never been reserved solely for such cheese produced in Greece.
55. The French Government concludes that the name 'Feta‘ does not relate to the 'place where that agricultural product or foodstuff was first produced or marketed‘ and cannot therefore be regarded as a 'name that has become generic‘ within the meaning of Article 3(1) of the basic regulation but must be regarded as having always been generic.
56. However, like the other applicant Governments, the French Government refers to the definition and to the three criteria laid down in the third subparagraph of Article 3(1) of the basic regulation to determine whether or not the name 'Feta‘ is generic.
57. As regards the first criterion - the existing situation in the Member State in which the name originates and in areas of consumption - the French Government maintains that, although the name 'Feta‘ incontestably has a specifically Greek connotation for Greek consumers, it does not thereby evoke a specific point of origin in Greece: it is produced in very diverse regions of that country. The Danish and German Governments add that the Hellenic Republic has not sought to protect the name 'Feta‘ and that it has not only tolerated the development, invarious countries, of a market for Feta made from cows' milk in accordance with modern processes but also proceeded, between 1965 and 1987, to effect imports from Denmark without making the slightest objection to the name used. The three Governments emphasise in this context that the Greek rules on this matter are fairly recent and post-date those adopted in other Member States.
58. As regards the situation existing in the other Member States - the second criterion in Article 3(1) of the basic regulation - the three applicants point out that, for several decades, Feta has been lawfully produced in several other Member States even though it is generally made using cows‘ milk. According to the French Government, the volume of such production equals and even outstrips Greek production. Moreover, Feta consumed in the other Member States is primarily Feta produced outside Greek territory. Finally, according to the Danish Government, the fact that a majority of the Member States asked the Commission to include 'Feta‘ on the list of generic names to be drawn up under Article 3(3) of the basic regulation sufficiently demonstrates the existence of Feta production in the other Member States.
59. As regards, finally, the third criterion - the relevant national or Community legislation - the applicant Governments not only state that Feta has been covered by national rules authorising the marketing of cheese, including that produced from cows‘ milk, under that name since 1963 in Denmark, since 1981 in the Netherlands, and since 1985 in Germany, but they also emphasise that the Community rules have never considered Feta as a specifically Greek designation of origin or as a cheese which must be made using sheep's and/or goats‘ milk. Thus, the rules on export refunds in the milk and milk products sector initially (see Commission Regulation (EEC) No 3266/75 of 15 December 1975 fixing the refunds on milk and milk products exported in the natural state (OJ 1975 L 324, p. 12)) granted refunds for exports of Feta regardless of the milk used for its production, and then later (see in particular Commission Regulation (EEC) No 3614/86 of 27 November 1986 fixing the export refunds on milk and milk products (OJ 1986 L 335, p. 18)) drew a distinction between Feta produced solely from sheep's and/or goats' milk and that made from other materials, but continued to grant the same refunds for both categories. Similarly, Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds (OJ 1987 L 366, p. 1) distinguished several different tariff headings for Feta according to the type of milk used, its packaging, its water content, and its content of dry matter and of fat by weight. Finally, after the adoption of the contested regulation, the Commission adopted Commission Regulation (EC) No 1170/96 of 27 June 1996 amending Regulation (EC) No 1600/95 laying down detailed rules for the application of the import arrangements and opening tariff quotas for milk and milk products (OJ 1996 L 155, p. 10), which distinguished between the headings 'Feta, of sheep's milk or buffalo milk‘ and 'Feta, other‘.
60. The three applicant Governments infer from the foregoing that, having regard to the three criteria expressly set out in Article 3(1) of the basic regulation, the name'Feta‘ is the common name for an agricultural

product, namely a particular white cheese in brine which may be made, using different methods, from either cows' milk, sheep's milk or goats' milk or a mixture thereof.
61. The applicant Governments add that other factors corroborate the generic nature of the name at issue.
62. The Danish Government submits in particular that the mere fact that the product concerned was being legally marketed under the name 'Feta‘ within the European Union on the date of adoption of the basic regulation shows that that name is a generic name within the meaning of that regulation. It observes that, by virtue of the second indent of Article 7(4) of the basic regulation, that fact is expressly mentioned as one that can be relied on for the purposes of the objection procedure established by that provision. Even if the objection procedure provided for in Article 7 is not applicable in the context of Article 17, that fact must be taken into account when the generic nature of a name is being assessed.
63. The Danish Government also refers in this context to the statement made by the Council and the Commission when adopting the basic regulation which shows that the latter was not intended to prevent the marketing of products lawfully placed on the market provided that there was no breach of traditional fair practice or any actual likelihood of confusion. According to the Danish Government, that cannot be the case so far as Feta produced in Denmark is concerned because, since 1963, rules have existed in that State which require Feta produced there to be clearly labelled as 'Danish Feta‘.
64. The Danish Government, and also the German and French Governments, finally criticise the Commission for relying primarily on the results of the Eurobarometer survey for its conclusion that the name 'Feta‘ is not generic and on the opinion of the Scientific Committee, which was in turn based on the results of that survey. The three Governments observe, first, that the results of that survey are far from conclusive. Second, whilst objecting in general terms to recourse to consumer polls to resolve legal problems such as the present one, they criticise the fact that the survey included neither the new Member States nor trade circles and that it attached particular importance to the State of origin at the expense of, in particular, the circumstances prevailing in the other production areas and in the areas of consumption. The Danish Government resents in particular the possibility that the question whether a name has become generic might be decided solely by reference to the perception of consumers and that the fact that consumers associate a name with its country or region of origin might be sufficient for it not to be regarded as having become generic.

**Arguments of the Commission and of the Greek Government**

65. The Commission and the Greek Government state first that Feta has been produced in Greece since ancient times. The name 'Feta‘ has been used there since the 17th century when Greece was under Venetian influence.
66. The Commission then contends that it is for a person claiming that a name is generic to prove that it is. That allocation of the burden of proof is implicit in Article 17(1) and (2) of the basic regulation and in Article 4 thereof, which does not require evidence, and from the third indent of Article 7(4), which requires evidence of the generic character of a name to be produced by the person opposing registration. That, moreover, is merely an application of the general rules on burden of proof. The Commission states that it advocated the same approach in a working document concerning the consequences of the adoption and entry into force of the basic regulation, which served as the basis for the proceedings of the committee provided for in Article 15 of the basic regulation, and that no Member State objected to that approach.
67. The Commission, supported by the Greek Government, also contends that a name meeting the conditions laid down in Articles 2 and 4 of the basic regulation cannot in principle be generic since, in the terms of the definition given by Article 3(1), a name is generic when it has become 'the common name of a product‘, that is to say when it is not associated with the geographical origin of the product in the mind of consumers - an association which, nevertheless, is essential in the context of Article 2. It is therefore necessary to be extremely cautious in supporting the view that a designation of origin has become generic, so that any evidence to that effect, in case of doubt or disagreement, must be subject to very strict conditions. According to the Commission, the examination of the request from the Greek Government for protection of the name 'Feta‘ did not establish that that name had become generic.
68. The Commission also contends that in this case examination of the question whether the name 'Feta‘ constitutes a generic name was undertaken in strict compliance with the conditions laid down in Article 3 of the basic regulation. It emphasises that, for that purpose, the basic regulation requires a comprehensive examination of all factors likely to influence the public perception in that regard and not merely of the indicative factors which it expressly mentions. Having regard to the case-law of the Court (**Case C-3/91 Exportur v LOR SA and Confiserie du Tech SA [1992] ECR I-5529, paragraph 37**), it is nevertheless appropriate to pay particular attention to the situation in the Member State of origin.
69. In that context, the Commission, supported by the Greek Government, rejects as irrelevant the arguments based on the fact that the name 'Feta‘ has long been used outside Greece and that, until the end of the 1980s, Greece took no steps to oppose such use. First, in other Member States cheese producers were entitled to use the name 'Feta‘ because no legal provision precluded their doing so. By reason of the principle of territoriality upheld by the Court in paragraph 12 of Exportur, cited above, according to which protection of the name is limited to theState which granted the protection, the Hellenic Republic was only in a position to protect the name 'Feta‘ within its frontiers, subject to

concluding bilateral or multilateral conventions. In any event, that argument is no more than a finding of fact showing that the name was used in other Member States: it does not mean that the name has thereby become generic.

70. The Commission also contends that only the figures relating to the actual consumption of Feta are relevant in defining the areas of consumption, and not those which relate to production and subsequent export of that cheese to other countries. Within the European Union, consumption is polarised: on the one hand, there is the Greek market, with annual consumption of 100 000 tonnes, that is to say 10 kg per person, and, on the other, there is the market of the other Member States with an annual consumption of 35 000 tonnes, that is to say 0.1 kg per person.

71. Likewise, according to the Commission, no argument to show the generic nature of the name 'Feta‘ can be derived either from the existence in certain Member States of national rules predating those of the Hellenic Republic or from the Community rules relied on by the applicants. First, the existence in certain Member States of legislation allowing the use of a well-regarded name which is not original to those States proves at most that the name has been used unlawfully, but not that it has become generic. Moreover, the Greek rules merely embody in legislation the traditional use of the name 'Feta‘ in Greece over the centuries. Second, the Community rules on export refunds and customs nomenclature relied on by the applicants reflect an approach specific to customs matters and are not in any way intended to govern industrial property rights relating to particular names or to reflect consumers' perceptions in that area, so that such rules are not relevant in determining whether a name is generic.

72. The Commission also states that, in order to assess the generic nature of a name, it is essential in case of doubt or disagreement to determine how consumers perceive it. An examination of the relevant national or Community legislation merely constitutes a guide, which is rarely decisive, for evaluation of the public perception.

73. The Commission states that it was therefore in order to ascertain the perception of consumers of the name 'Feta‘ and their attitude to it that it arranged, in April 1994, for the Eurobarometer survey. Whilst preparing in 1993 the draft list of generic names provided for in Article 3(3) of the basic regulation, it found that only the name 'Feta‘ was going to give rise to disagreement among the Member States regarding its generic nature. According to the Commission, it is clear from the results of the Eurobarometer survey that the name 'Feta‘ is not widely known in the European Community and that, elsewhere than in Denmark, of those who know it the majority associate it with a cheese and a substantial number state that it is Greek cheese, so that it may safely be concluded that the name 'Feta‘continues to be associated in the minds of consumers with the geographical origin of the product.

74. The Commission also points out that, in the light of all the factors mentioned above and having regard to the definition contained in Article 3 of the basic regulation, it sought the opinion of the Scientific Committee which unanimously decided that the name 'Feta‘ was not generic.

75. As regards the argument of the Danish Government based on the second indent of Article 7(4) of the basic regulation, the Commission states that the contested regulation was adopted on the basis of Article 17 of the basic regulation, which expressly provides that Article 7 is not to apply in the simplified registration procedure, since the considerations underlying the objection procedure provided for in Article 7 of the basic regulation would have no justification in the simplified procedure, which is designed to deal definitively with numerous cases of names existing at the date of adoption of the basic regulation which were protected by the domestic laws of the Member States. Since those names would not have enjoyed general legal protection in the Community before the adoption of the basic regulation, conflicts between the legitimate owners of those names and those who exploited them would have been inevitable.

76. The Commission also indicates that Article 13(2) of the basic regulation laid down a transitional period, extended by Regulation No 535/97, enabling the Member States to keep in force national measures allowing the use of names or expressions which could not normally be used because they were registered, provided in particular that the products to which they relate have been marketed legally using such names or expressions for at least five years before the date of publication of the regulation. The Commission considers, however, that the fact that a product has been legally marketed in the past cannot be validly taken into account in appraising whether the name used has become generic, otherwise Article 13(2) would be deprived of any purpose in that it specifically applies to products which were legally marketed under a name which will henceforth be reserved for other products.

77. The Commission adds that, although the statement made by the Council and the Commission when adopting the basic regulation may, according to the case-law of the Court (see in particular Case 143/83 Commission v Denmark [1985] ECR 427, paragraph 13, and Case C-292/89 The Queen v Immigration Appeal Tribunal, ex parte Antonissen [1991] ECR I-745, paragraphs 17 and 18), contribute to interpretation of the rules adopted, it cannot however alter the objective scope thereof and cannot therefore be used to render Article 7 of the basic regulation applicable in the simplified proedure under Article 17 of that regulation.

**Findings of the Court**

78. It must be made clear at the outset that the French Government's claim that the name 'Feta‘ does not relate to the place where the product that it designates originates is not in any event, even if correct, such as to justify the conclusion that Article 3(1) of the basic regulation, and in particular its definition of the term 'name that has become generic‘, is not applicable to this case.

79. First, the fact that that provision is applicable even if the name of the product continues to relate to its place of origin indicates clearly that it is also and in any event applicable if it does not relate or no longer relates to it.
80. Second, it is clear in particular from Article 3(3) of the basic regulation, which requires the Council to draw up an indicative, non-exhaustive list of the names of agricultural products 'regarded under the terms of paragraph 1 as being generic', that the definition which the latter gives of the term 'name that has become generic' is also applicable to names which have always been generic.
81. As regards, next, the question whether the name 'Feta' must be regarded as a name that has become generic within the meaning of Article 3(1) of the basic regulation, it is to be observed that the contested regulation confines itself to stressing, in the second recital in its preamble, that some of the names notified by the Member States to the Commission under Article 17 of the basic regulation were found to be in accordance with the provisions of that regulation and eligible to be registered and, in the third recital, to recalling that generic names are not registered.
82. However, the contested regulation contains no indication or clarification regarding the reasons for which, notwithstanding the arguments put forward by certain Member States either in the context of preparation of the draft list of generic names provided for in Article 3(3) of the basic regulation or in the procedure for adoption of the contested regulation, as governed by Article 15 of the basic regulation, the Commission was persuaded to consider that the name 'Feta' does not constitute a generic name and can therefore be registered.
83. those circumstances, it is appropriate, in considering whether the Commission properly applied Article 3(1) of the basic regulation in relation to the name 'Feta', to refer to the considerations which it put forward in that connection in the context of the proposal for a decision, to which it itself referred and which was drawn up in parallel with the adoption of the contested regulation, and to the explanations which it gave in the proceedings before the Court.
84. In the explanatory memorandum to the proposal for a decision, the Commission simply stated that the basic regulation requires that all factors be taken into account, including those expressly listed in Article 3(1), before going on to say that those criteria 'are to be considered together' and that it should be noted in that connection that in paragraph 37 of its judgment in Exportur v LOR SA andConfiserie du Tech SA, cited above, 'the Court took as a criterion the status of the name in the Member State of origin with a view to establishing whether it had become generic'. However, the Commission did not give any indication whether and to what extent the names which it finally proposed treating as generic fulfilled those criteria or of the reasons for which it considered that the name 'Feta' to which it devoted a separate chapter in its explanatory memorandum to the proposal for a decision did not fulfil them.
85. As is clear from the part of this judgment explaining the facts of the case, the Commission based its decision not to include the name 'Feta' on the list of generic names which it proposed on the basis of the results of the Eurobarometer survey which it had had carried out and on the opinion of the Scientific Committee to which it had referred the matter. It is also clear from the explanatory memorandum to the proposal for a decision that the information on which the Scientific committee based its opinion included 'in particular the results of the opinion poll'.
86. In its submissions to the Court, the Commission not only clarified the reasons for which it attached great importance to the results of the survey which it had arranged and to the opinion of the Scientific Committee which it had sought, but also outlined the factors expressly listed in Article 3(1) of the basic regulation and the other factors referred to by the applicants in support of the view that the name 'Feta' is generic.
87. With respect to those factors, it must nevertheless be observed that the Commission minimised the importance to be attached to the situation existing in the Member States other than the State of origin and considered their national legislation to be entirely irrelevant on the grounds, first, that, as is apparent from paragraph 37 of the judgment in Exportur v LOR SA and Confiserie du Tech SA, cited above, it is appropriate to attach primary importance to the situation existing in the Member State of origin and, second, that the fact that, in other Member States, the name 'Feta' may have been used for the marketing of lawfully produced cheese is no basis for concluding that that name has become generic.
88. With regard to the first of those arguments, it must be emphasised first that Article 3(1) of the basic regulation expressly requires that, in order to determine whether a name has become generic, account is to be taken of all factors, including always those expressly listed, namely the existing situation in the Member State in which the name originates and in areas of consumption, the existing situation in other Member States and the relevant national or Community laws.
89. Next, in Exportur v LOR SA and Confiserie du Tech SA, cited above, the Court was called on to rule whether it is contrary to the free movement of goods for a bilateral agreement between two Member States to render applicable, in the State of importation, the law of the State of origin, thus derogating from the principle of territoriality, according to which the protection of indications of provenance anddesignations of origin is governed by the law of the State in which the protection is applied for, that is to say by that of the State of importation.
90. In answering that question in the negative, but subject to the express condition that the geographical indications which that bilateral agreement is intended to protect have not, at the time of its entry into force or thereafter, become generic in the State of origin, the Court therefore did no more than ensure that the protec-

tion in the State of origin should not be extended to the territory of another State unless, in the State of origin itself, that protection is, or continues to be, deserved.

91. As regards the second argument, to the effect that, in the context of the third indent of Article 3(1) of the basic regulation, it is irrelevant that in several Member States other than the State of origin national rules have long existed which allow use of the name 'Feta‘, it must be borne in mind, first, that, under the second indent of Article 7(4) of the basic regulation, the fact that registration of a name at the request of a Member State might jeopardise the existence of products which are legally on the market constitutes a ground on which a statement of objection from another Member State may be admissible.

92. Second, as the Commission itself pointed out in its defence in Case C-293/96, it must be noted that, even though Article 17(2) of the basic regulation expressly provides that Article 7 thereof is not applicable in the simplified registration procedure, a registration under that procedure also presupposes that the names conform with the substantive requirements of that regulation. In the absence of express provisions to the contrary, there is no possibility, under the simplified procedure, of names being registered which do not fulfil the substantive conditions for registration under the normal registration procedure.

93. Admittedly, as is clear from Article 7(5) of the basic regulation, the fact that an objection is admissible under paragraph 4 does not prevent the registration applied for from being finally granted. Moreover, Article 7(4) of the basic regulation also provides, in the third indent, that the fact that the name of which registration is applied for may appear to be generic in nature also constitutes a legitimate ground on which a statement of objection may be admissible.

94. However, first, even though the admissibility of a statement of objection does not prejudge any decision which the Commission may ultimately have to take on the substance, the fact nevertheless remains that, at the time of adoption of that decision, the Commission must take account, as is expressly required by Article 7(5)(b) of the basic regulation, of 'traditional fair practice and of the actual likelihood of confusion‘.

95. Second, the finding that Article 7(4) of the basic regulation makes the existence of products which are legally on the market a ground for the admissibility of a statement of objection distinct from the ground that the name whose registrationis applied for is generic, does not necessarily mean that the first of those two circumstances should not be taken into account in the context of the third indent of Article 3(1) of that regulation, whether in relation to the situation existing in Member States other than the State of origin or to the legislation of those States or to an independent factor.

96. On the contrary, in view of that finding it must be stressed that, in the context of procedures for registration of a name of a product under the basic regulation, account must be taken of the existence of products which are legally on the market and have therefore been legally marketed under that name in Member States other than the State of origin by which registration is applied for.

97. G. C. Rodríguez Iglesias, P. J. G. Kapteyn, G. Hirsch, P. Jann, G. F. Mancini, J. C. Moitinho de Almeida, C. Gulmann, J. L. Murray, D. A. O. Edward, H. Ragne-malm, L. Sevón, M. Wathelet en R. Schintgen The foregoing conclusion is also supported by the statement made by the Council and the Commission when adopting the basic regulation, in which, after noting, first, that generic names cannot be registered and, second, that the existence of a legally marketed product enables a Member State to object to the registration of a name, they emphasised that 'this regulation is not intended to prevent the continued marketing of products legally sold within the Community on 30 June 1992, so long as they do not conflict with the criteria relating to traditional fair practice and actual likelihood for confusion‘.

98. No doubt is cast on that conclusion by the Commission's statement that the basic regulation distinguishes between the case of generic names, which cannot be registered, and that of products lawfully on the market which, under Article 13(2), enjoy a transitional period during which they may continue to be marketed under the name used in the past even if that name has been registered.

99. That distinction does not mean that the fact that a product has been legally marketed under a name in certain Member States cannot constitute a factor to be taken into account when considering whether, in the meantime, it has become generic within the meaning of Article 3(1) of the basic regulation.

100. Contrary to the Commission's contention, consideration of that factor does not deprive Article 13(2) of the basic regulation of its purpose since that provision continues to be applicable in any event when, despite that factor in particular, the name in question has been registered.

101. It must be concluded that the Commission's own submissions show that, when registering the name 'Feta‘, it took no account whatsoever of the fact that that name had been used for a considerable time in certain Member States other than the Hellenic Republic.

102. In view of the foregoing considerations, it must be concluded 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.

103. It follows that the plea in law alleging infringement of Article 17(2) of the basic regulation, in conjunction with Article 3(1) thereof, is well founded. Since the error in law thus established could have determined the conclusion reached by the Commission, the contested regulation must be annulled to the extent to which it registers the name 'Feta‘ as a PDO, and there is no need to consider the other pleas in law and arguments relied on by the parties.

**Costs**

104. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they are asked for in the successful party's pleadings.

Since the Kingdom of Denmark, the Federal Republic of Germany and the French Republic have asked for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, Member States which intervene in proceedings must bear their own costs.

**On those grounds,**

**THE COURT**

hereby:

1. Annuls 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 to the extent to which it registered 'Feta‘ as a protected designation of origin;
2. Orders the Commission of the European Communities to pay the costs;
3. Orders the Hellenic republic to bear its own costs.

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OPINION OF ADVOCATE GENERAL
LA PERGOLA
delivered on 15 September 1998 (1)
Joined Cases C-289/96, C-293/96 and C-299/96
Kingdom of Denmark, Federal Republic of Germany and French Republic
v
Commission of the European Communities
(Council Regulation (EEC) No 2081/92 - Commission Regulation (EC) No 1107/96 - Registration of geographical indications and designations of origin - 'Feta‘)

1. In the present action, the Kingdom of Denmark (Case C-289/96), the Federal Republic of Germany (Case C-293/96) and the French Republic (Case C-299/96) seek the annulment of 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 (2) in so far as it provides for the registration of the word 'feta‘ as a protected designation of origin. More specifically, the applicants argue that the conditions laid down by Regulation No 2081/92, (3) which would enable feta to benefit from the protection afforded by that regulation, have not been satisfied.

Legislative and factual background

2. In order to reduce the obstacles to the free movement of goods posed by the coexistence of differing national systems for the protection of designations of origin and geographical indications, Regulation No 2081/92 introduced a set of uniform Community rules which make it possible to protect these designations and indications throughout the Member States.

The concepts of 'designation of origin‘ and 'geographical indication‘, for the purposes of applying the regulation, are set out in Article 2(2), which provides:

'(a) designation of origin: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:
- originating in that region, specific place or country, and
- the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area;

(b) geographical indication: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:
- originating in that region, specific place or country, and
- which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or
processing and/or preparation of which take place in the defined geographical area‘.

Article 2(3) goes on to provide that:

'Certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a) shall also be considered as designations of origin‘.

The scope of protection afforded by the regulation is defined in Article 13, which provides:

'1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as ”style”, ”type”, ”method”, ”as produced in”, ”imitation” or similar;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the public as to the true origin of the product.

...‘

Further, under Article 8, 'the indications PDO [protected designation of origin], PGI [protected geographical indication] or equivalent traditional national indications may appear only on agricultural products and foodstuffs that comply with this Regulation‘.

Of fundamental importance for the purposes of the present case is Article 3, which provides that 'names that have become generic may not be registered‘. Article 3 goes on to provide:

'For the purposes of this Regulation, a ”name that has become generic” means 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.
To establish whether or not a name has become generic, account shall be taken of all factors, in particular:
- the existing situation in the Member State in which the name originates and in areas of consumption,
- the existing situation in other Member States,
- the relevant national or Community laws.
Where, following the procedure laid down in Articles 6 and 7, an application of registration is rejected because a name has become generic, the Commission shall publish that decision in the Official Journal of the European Communities.
2. A name may not be registered as a designation of origin or a geographical indication where it conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the public as to the true origin of the product.
3. Before the entry into force of this Regulation, the Council, acting by a qualified majority on a proposal from the Commission, shall draw up and publish in the Official Journal of the European Communities a non-exhaustive, indicative list of the names of agricultural products or foodstuffs which are within the scope of this Regulation and are regarded under the terms of paragraph 1 as being generic and thus not able to be registered under this Regulation.‘
The protection established by the regulation is subject to registration of the name in question in the 'Register of protected designations of origin and protected geographical indications‘. That registration must take place in accordance with the procedure laid down in the regulation. In the present case, the relevant procedure is the 'abridged‘ procedure which is governed by Article 17 and relates to the registration of names already in existence. Article 17 provides:
'1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.
3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.‘
3. Turning now to the facts which gave rise to the present action, it is appropriate to begin by giving a brief description of the characteristics of feta cheese. The word itself - which is of Italian origin and means 'slice‘ or 'piece‘ - designates a traditional white cheese in brine which has been made since time immemorial throughout Greece and also in other Balkan states. (4) The cheese is made by allowing milk to coagulate naturally at normal pressure. (5) The resulting substance has a dense texture, a natural whitish colour, a distinctive smell and a slightly acidic, salty, fatty taste.
Until 1988, there was no regulation of the production of feta in Greece. The cheese is produced in numerous locations and there are therefore several local and regional variants of the product. Moreover, given the absence of technical specifications at an international level, other methods of producing feta are to be found in various other Member States of the Community and also in non-member countries, which are none the less quite distinct from the methods used in Greece. The difference lies in the use of cow's milk, rather than the sheep's milk and/or goat's milk that is used in Greece, and in the use of an industrial method of production called ultrafiltration, which is more modern and more economical than
natural straining. Outside Greece, as far as the common market is concerned, the production of feta is mainly concentrated in Denmark (which is the largest producer), where production began in the 1960s, and in Germany, the Netherlands, and France. (6)
4. As stated, regulation in Greece of the conditions under which feta is produced and marketed began in 1988 (7) and culminated in the adoption of a decree in 1994, (8) under which the denomination of origin 'feta‘ was established at national level.
By letter dated 21 January 1994, the Greek Government requested registration of the word 'feta‘ as a PDO under the abridged procedure laid down by Article 17 of Regulation No 2081/92. On 19 January 1996, in accordance with Article 15 of the regulation, the Commission submitted to the committee provided for by that article a list of the names of which registration had been requested. The list included the word 'feta‘. Since the committee failed to deliver its opinion within the time-limit laid down for it, on 6 March 1996 the Commission submitted a proposal to the Council, as provided for in the fourth paragraph of Article 15. The Council too, however, failed to deliver its opinion within the time limit laid down, and so, on 12 June 1996, the Commission, acting pursuant to the fifth paragraph of Article 15, adopted the contested regulation by which feta was registered as a PDO. (9)
5. The Kingdom of Denmark, the Federal Republic of Germany and the French Republic brought an action for annulment against that regulation. (10) The
Hellenic Republic intervened in the proceedings in support of the form of order sought by the Commission, which is the defendant institution.
Substance of the case
In essence, the applicant governments claim that the contested regulation is invalid in so far as it provides for registration of the word 'feta‘ as a PDO. Two reasons are given. First, they argue that the conditions laid down by Article 2 of Regulation No 2081/92, which must be fulfilled if a product is to benefit from a PDO, have not been satisfied. Second, they submit that the word 'feta‘ is a generic term and cannot, therefore, in light of Articles 3 and 17 of that regulation, be protected as a PDO.

Infringement of Article 2(2) of Regulation No 2081/92
6. As to the first criticism, the applicants argue that registration of feta as a PDO is contrary to Article 2(2) of Regulation No 2081/92 in that the geographical area which falls under the protection of the registered name would extend to substantially all of Greece, something which the regulation precludes in the case of traditional non-geographical names, such as that in point here. Moreover, feta is not even of purely Greek origin, but originates in the whole of the Balkans.
However, the Commission, supported by the Greek Government, contests this view. It maintains that the geographical region of provenance of feta does not extend to the whole of Greece in that is does not include the archipelagoes of the Ciclades and the Sporades or the Island of Crete, even though a cheese in brine similar to feta is traditionally produced in those areas. The region of origin of feta is therefore mainland Greece and the Department of Lesbos. Moreover, the area thus defined is characterised by homogenous climatic conditions and vegetation, which give the feta produced in this area distinctive qualities.
7. In my view, the argument put forward by the applicant governments must be upheld. First, it should be noted that the parties have correctly classified the name in question as a 'traditional non-geographical name‘ under Article 2(3). The word 'feta‘ is derived from the Latin and means a slice. It does not, therefore, designate 'the name of a region, a specific place or [...] a country‘, as Article 2(2)(a) requires in the case of geographical names. It therefore falls to be determined whether the requirements laid down by Article 2(3) for giving feta a non-geographical name have been fulfilled.
In my opinion, the answer must be that they have not, for the reasons set out below.
First, under Regulation No 2081/92, only a product 'originating in a region or a specific place‘ (11) may avail itself of a protective name. The product must also, 'fulfil the conditions referred to in the second indent of paragraph 2(a)‘, that is to say the quality or characteristics of the product must be 'essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation [must] take place in the defined geographical area‘. Next, it is significant that, with the type of name in issue here, that is, a traditional non-geographical name, the regulation precludes the geographical region under consideration from being coextensive with the whole of a country, whereas it does allow this in the case of names of other types. (12)
The wording just cited reflects a fundamental requirement in the matter of protected names: the product bearing the name must have a special relationship with a defined area. There are two aspects to this requirement. First and foremost, the product must originate in a specific, defined area. Secondly, the origin of the product must confer on it particular characteristics in terms of qualityand reputation. This is what the regulation requires (13) when it provides that the quality and reputation should be 'essentially or exclusively due to [the] [...] geographical environment‘ in point. I would add that the relationship between product and territory must be exclusive, in the sense that the product must have been conceived of, developed and established exclusively in that area and nowhere else. Only this exclusive relationship justifies the grant of a collective monopoly for the exploitation of the name to a group of producers who enjoy that monopoly precisely by virtue of the place where they are established.
8. These conditions are not fulfilled in the present case. The applicant governments have correctly pointed out that, in the present case, the relationship between the product and a well-defined area is lacking, given that the geographical area covered by the name 'feta‘ extends to substantially the whole of the Greek national territory. I am in agreement with this observation. As the Commission observed, it is true that the term 'region‘, as it appears in the regulation, should not be construed in the administrative sense. There may therefore be 'regions‘
within the meaning of the regulation which cover one or more administrative regions. Nevertheless, the geographical area in question must be characterised throughout by climatic and morphological conditions which guarantee the uniform quality of the product. In other words, the particular conditions which affect the characteristics of the product must be present throughout the whole of the geographical area concerned. Clearly, the likelihood of this being the case diminishes in proportion to the size of the area to which the name relates, and all the more so when the area in question covers almost all of the national territory. It is not by accident that the regulation in issue limits to 'exceptional cases‘ (14) (and to cases, moreover, other than those of non-geographical names such as the one in issue here) the protection of names of products originating in the whole of a country.
Quite apart from this last point, there is, in any event, a preliminary and quite comprehensive reason for which, in my opinion, feta cannot be regarded as originating in Greece for the purposes of the regulation on PDOs. It is true that feta is a traditional Greek product. However, I do not believe that it can be defined as originating in any particular region of Greece in the sense that the product was developed and established exclusively in that region, with particular characteristics specifically attributable to its place of origin. It is not disputed that feta originates in the Balkan region and that it therefore has its origins in a territorial area much larger than that of any specific region or even of an entire country. It is, therefore, a product which derives its origin from a regional area comprised of several countries and which is therefore larger than that envisaged by the regulation. The special, close relationship between product and region which, under the system provided for in the regulation, justifies the grant of a PDO, is therefore absent.
By saying this I do not wish to deny that feta is closely linked with traditional Greek gastronomy. But the function of the PDO, within the system established by the regulation, is not to protect culinary and gastronomic

traditions per se. Tradition is protected, by way of the grant of an exclusive right to use a particular name, where it has been established and developed in a specific geographical area and, above all, where the particular quality of a product is attributable specifically to the fact that it originates in that area, in which there is an unique combination of 'natural and human factors‘ which characterise the product as unique and thus deserving of protection.

9. In my opinion, the observations set out above provide justification for the annulment of the contested regulation in so far as it provides for registration of the word feta as a PDO. The product designated by the name does not originate in any particular geographical region of Greece to which it owes its qualities or characteristics. Nor can it be said, on the other hand, that the product originates

in Greece as a whole, to the exclusion of other countries, given that, since time immemorial, it has been a part of traditional cheese-making throughout the whole of the Balkan region. It therefore fails to satisfy the requirement which Article 2(2) of Regulation No 2081/92 lays down as an essential condition for the registration of a PDO, namely that the product should have a special relationship with a specific geographical region, both in the sense that it originates exclusively in that region and that its particular qualities and characteristics are 'essentially or exclusively due to [the] particular geographical environment‘ in question.

As to the generic nature of the name 'feta

10. The above considerations enable me also to assess the other argument put forward by the applicant governments, relating to the generic nature of the word feta. The relevant provision here is Article 3 of Regulation No 2081/92, according to which 'names that have become generic may not be registered‘. (15) That provision states that 'for the purposes of this Regulation, a ”name that has become generic” means 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‘.

A point to be noted, to begin with, is the fact that, in the provision just mentioned, the problem of generic nature is viewed in a dynamic perspective. The Community legislature actually refers to 'names which have become generic‘ with the passage of time, even though they were 'originally‘ connected to the specific geographical areas where the product to which they relate originate. However, as the French Government rightly observed, the name in issue in the present case does not designate a product which specifically originates in a particular region in Greece and which later became the common name for an agricultural product or a foodstuff. Feta, cannot, I would repeat, be said to 'originate‘ in Greece, and still less in any particular region in Greece. Logically, therefore, feta did not 'become generic‘. Rather, it was never specific, in the sense that it never referred to any particular product originating in any specific geographical area and having any special characteristics due specifically to the origin of the product in the area in question. In other words, according to the point of view advanced here, the word 'feta‘ did not become generic, but always was generic. And if, under Article 3, names which have become generic cannot be registered, then, a fortiori, the same is true of those which were generic from the beginning.

11. But let us assume - to leave no stone unturned - that the name was originally connected with a specific place or region. Then in any event, in my opinion, the criteria for holding that it later became generic within the meaning of Article 3 are satisfied. According to that provision, account must be taken of all the factors set out therein, and 'in particular:

- the existing situation in the Member State in which the name originates and in areas of consumption,
- the existing situation in other Member States,
- the relevant national or Community laws‘

How are the criteria set out above applied? Looking at the situation within Greece, it may be that consumers in that country do not consider the word feta as a generic name. Advocate General Ruiz-Jarabo Colomer considered this point in the Canadene Cheese Trading case, but solely with reference to the question whether the possible generic nature of the word feta was reflected in the internal Greek market. The Advocate General said on that occasion that 'the production, in other Member States of the EC, of a variety of feta different from that which predominates in Greece may have converted the name ”feta” into a generic term in those States‘. (16) It is precisely this kind of global assessment, which takes into account the whole of the Community territory, that is dictated by Article 3. It is clear from that provision that an investigation aimed at establishing whether a name has undergone an irreversible process of generalisation must be carried out taking into account - as Article 3 provides - 'all factors‘, (17) and not only, therefore, the situation existing within Greece, but also that which distinguishes the other Member States. (18)

Thus, from this perspective, the fact that the production and marketing of feta in Denmark, Germany and the Netherlands is governed by national rules which predate those established in Greece, takes on decisive importance. Moreover, it cannot be said that the feta which is regulated in those countries is substantially different from that traditionally produced in Greece. There are indeed differences in production which, as mentioned earlier, relate to the type of milk used (cow's milk rather than goat's and/or sheep's milk) and, secondarily, to the method of production (ultrafiltration in place of natural straining). But, as Advocate General Ruiz-Jarabo Colomer pointed out in the Canadene Cheese Trading case, (19) despite these differences, 'there is no substantial difference between sheep's and/or goat’s milk feta and feta made from cow's milk. The situation in international law, the references in Community legislation and the domestic legislation of all the Member States, except Greece, and the expectations of consumers in all the Member States show that feta may be made from sheep's, goat's, or cow's milk

without giving rise to differences in the individual varieties of feta‘.
12. Furthermore, the Community legislation - to which Article 3 refers - has never considered feta as a designation of origin of a product which is specifically Greek or as a cheese which must necessarily be manufactured using sheep's and/or goat's milk. (20) The Commission objects that the legislation in issue was adopted in the field of customs and therefore has no bearing upon the generic nature of the name. The defendant institution, however, overlooks the fact that Article 3 of Regulation No 2081/92 requires that Community legislation must be taken into account when investigating whether or not a name is generic. (21) That legislation, even if it does expressly relate to the aspect of the generic nature of a name, clearly suggests that feta has never been regarded as a product which necessarily comes from Greece, or from a particular region in Greece, or as a product made
exclusively in accordance with the methods used in that country. This confirms that feta cannot but be considered as a generic name. It is not a name which designates a product which is exclusive in the sense that it typically originates in a specific region and is manufactured according to traditional production processes in that region. Rather, it is a word which identifies, in the ordinary language of the Community legislature and of consumers, a type of cheese which is widely available and is produced in various Member States of the Community and also in several non-member countries.
Accordingly, I consider that the claim of the applicant governments must be allowed also on the issue of generic nature.
13. The applicant governments go on to put forward further arguments in support of the view that the contested regulation is invalid. In particular, the German Government submits that registration of the word 'feta‘ as a PDO is contrary to Article 30 of the Treaty, which is binding not only on the Member States but also on the Commission. In this connection, it mentions the earlier case, Exportur, in which the Court held that 'a Member State cannot, without infringing the provisions of Article 30, use a legislative measure to reserve to domestic products names which have been used to indicate products of any provenance whatever by requiring the undertakings of other Member States to use names unknown to or less highly prized by the public. By reason of its discriminatory nature, such legislation is not covered by the derogation provided for in Article 36‘. (22)
The Danish Government, for its part, complains of a breach of the principle of proportionality. (23) In its submission, protection of Greek feta could (and should) have been assured by the use of compound names, that is, by adding to the generic name 'feta‘ the area of traditional manufacture, giving, for example 'Macedonian feta‘, 'Thracian feta‘ and so on.
Furthermore, it alleges that the Commission has infringed Article 5 of the Treaty, which imposes upon Member States and Community institutions reciprocal duties of sincere co-operation, in that it disregarded the objections expressed by numerous Member States at the time when feta was registered as a PDO.
However, in light of the observations set out above, which lead me to suggest that the Court should annul the contested regulation, there is no need for me to dwell
upon these arguments, analysis of which serves no purpose since the applicants have succeeded in their other pleas.
Conclusion
On the basis of the foregoing, I propose that the Court should:
- annul the registration of 'feta‘ as a PDO under part A of the Annex to 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;
- order the Commission to pay the costs.

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1: Original language: Italian.
2: - OJ 1996 L 148, p. 1.
3: - 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 1992 L 208, p. 1).
4: - The particular countries of the Balkan region most closely connected with the traditional production of feta appear to be Albania, Bulgaria, Cyprus, Romania and the former Yugoslavia.
5: - Advocate General Ruiz-Jarabo Colomer, in his Opinion delivered on 24 June 1997 in Case C-317/95 Canadene Cheese Trading [1997] ECR I-4681, which was removed from the register by order of the President of the Court of 8 August 1997, gave the following description of the salient phases in the production process:
'- The milk is coagulated either with the traditional rennet or other enzymes or animal origin which act in a similar way.

- The curds are then turned into perforated moulds where natural straining takes place without pressure. As the whey is strained, the curd solidifies and salt is added to the surface leading to the formation of microflora which assist the process of maturing.
- The curds are then put into wooden or metal containers and brine of 7% concentration is added. The containers are placed in maturing rooms under controlled temperature and humidity conditions.
- The cheese ripens in two months, the first two weeks in the maturing rooms and the rest of the time in cold-storage plant‘ (section 15).
6: - In France, in addition to feta produced from cow's milk, there is also a method which uses sheep's milk. The regions concerned are Corsica and other areas in the Massif Central, such as Roquefort. As regards non-member countries, feta is produced and consumed in Iran and Saudi Arabia, where it is principally manufac-

tured using sheep's and/or goat's milk, and in New Zealand and the United States of America, where feta made from cow's milk predominates.
7: - Ministerial Decree No 2109/88 of 5 December 1988.
8: - Decree of the Deputy Minister for Agriculture No 313025/94 of 11 January 1994.
9: - See part A of the Annex, under the heading 'Cheeses - Greece‘.
10: - The three cases were joined by order of the President of the Court of 27 November 1997. It should also be mentioned that, at the same time, certain undertakings producing feta in Denmark, Germany and France brought three actions before the Court of First Instance with a view to obtaining the annulment of the contested regulation by that court (Case T-139/96, Case T-140/96 and Case T-141/96). By three orders of 20 February 1997, the Court of First Instance declined jurisdiction in favour of the Court of Justice, which, in turn, referred the cases to the Court of First Instance by order of 29 May 1998. Again on the matter of the problem of the name 'feta‘, the Opinion of Advocate General Ruiz-Jarabo Colomer in the Canadene Cheese Trading case cited above at footnote 4 should be borne in mind, although the subject-matter of those actions was different from the questions referred in the present case. The Advocate General emphasised that 'it might be possible for the name ”feta”, although not fulfilling the conditions laid down by Regulation No 2081/92 for a PDO at Community level, to meet the criteria laid down by Community case-law relating to geographical names and therefore to be justified under Article 36 of the Treaty‘ (section 44).
11: - See Article 2(3). (My italics.)
12: - The possibility of registering a name which designates a product originating in the entire territory of a country is provided for - albeit 'in exceptional cases‘ - only by the first indent of Article 2(2)(a). However, the provision concerned here, namely Article 2(3), only refers to the second indent, which does not allow for such a case, and not to the first. Article 2(3) refers to 'traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place‘, but not in an entire country. (My italics.)
13: - See the second indent of Article 2(2)(a).
14: - See Article 2(2)(a).
15: - In the Canadene Cheese Trading case cited above, Advocate General Ruiz-Jarabo Colomer reviewed the case-law on generic names, which are defined as being those 'names which form part of the general cultural and gastronomic stock and may, in principle, be used by any producer‘ (section 28). The Advocate General added that 'the Court's case-law does not define what is meant by ”generic name”‘. For present purposes, it is helpful to point out that this approach in the case-law was, for the greater part, established prior to Regulation No 2081/92 and that the examination in the present case should be conducted by reference to the criteria set out in Article 3 of that regulation, which, in any event, are substantially the same as those developed in the earlier case-law.
16: - Section 77 of the Opinion in the Canadene Cheese Trading case, cited above.
17: - Which puts into context the conclusive weight which the Commission attaches to a survey carried out among consumers in 1994, which is said to show that the majority of those interviewed associate the word feta with a cheese, and a substantial proportion of them associate it with a Greek cheese.
18: - Moreover, this criterion seems to me to be the only one which is compatible with the case-law of the Court according to which consumer habits are likely to vary from one country to another, and may even vary within a single country. Indeed these variations are one of the consequences of the establishment of the internal market. This is why the Court has held that the legislation of one Member State must not 'crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to comply with them‘: see Case 170/78 Commission v United Kingdom [1980] ECR 417 and Case 178/84 Commission v Germany [1987] ECR 1227, at paragraph 32.
19: - Cited above, paragraph 67.
20: - The relevant regulations are Commission Regulation (EEC) No 3266/75 of 15 December 1975 (OJ 1975 L 324, p. 12) and Commission Regulation (EEC) No 3322/75 of 19 December 1975 (OJ 1975 L 328, p. 40), which fix repayments in the milk and milk-based products sector and which grant refunds on the export of feta without distinguishing between the types of milk used in the preparation of the cheese. What is more, whilst Commission Regulation (EEC) No 3167 of 16 October 1986 (OJ 1986 L 294, p. 28) does distinguish between feta produced solely from sheep's milk and goat's milk and that prepared using other ingredients, it granted the benefit of refunds to both types of product. To this effect, see also Commission Regulation (EEC) No 3846 of 17 December 1987, which establishes the nomenclature of agricultural products for the purposes of export refunds (OJ 1987 L 366, p.1).
21: - In a communication dated 1991 (Interpretative communication on the names under which foodstuffs are sold, OJ 1991 C 270, p.2), the Commission suggested that, among the criteria for identifying the 'characteristics of a product‘ which might render it unsuitable for sale under a generic name in the Member State of destination, account might be taken of 'references in any Community acts, including the tariff nomenclature used in implementing the Common Customs Tariff‘. (My italics.)
22: - Case C-3/91 [1992] ECR I-5529, at paragraph 29.
23: - Apart from the breach of the principle of proportionality, the Danish Government complains of a failure to comply with the principle of non-discrimination. 'Feta‘, it argues, is a generic name and should therefore have been treated in the same way as other generic names, such as 'brie‘ for example, for which registration was refused.