European Court of Justice, 26 February 2008, Parmesan

DESIGNATIONS OF ORIGIN

Abuse of a protected designation of origin

- **The use of the name 'Parmesan' must be regarded, in the sense of Article 13(1)(b) of Regulation No 2081/92, as an evocation of the PDO 'Parmigiano Reggiano'.**

Use of the name 'Parmesan'

- **Since the Federal Republic of Germany has therefore failed to show that the name 'Parmesan' has become generic, use of the word 'Parmesan' for cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' must be regarded for the purposes of the present proceedings as infringing the protection provided for that PDO under Article 13(1)(b) of Regulation No 2081/92 .**

Not established that Fedral Republic of Germany has failed to fulfil its obligations

- **It must be held that the Commission has not established that, by formally refusing to proceed against the use on its territory of the name 'Parmesan' on the labelling of products which do not comply with the requirements of the specification for the PDO 'Parmigiano Reggiano', the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of Council Regulation (EEC) No 2081/92.**

By granting those civil law rights, the Federal Republic of Germany has taken all the measures necessary to guarantee full application of Article 13(1) of Regulation No 2081/92. It is not necessary for the pub-lic authorities to take administrative action on their own initiative against infringements of that provision, and that is also not required under Articles 10 and 13 of the regulation. (…). It is not disputed that the German legal system provides legal instruments such as the legislative provisions mentioned in paragraph 63 above which are designed to ensure the effective protection of the rights which individuals derive from Regulation No 2081/92. It is also not disputed that the possibility of taking legal action against any conduct that might infringe the rights derived from a PDO is not reserved solely to the le-gitimate user of that designation. It is, on the contrary, open to competitors, business associations and con-sumer organisations.

In those circumstances, such legislation is capable of guaranteeing the protection of interests other than those of the producers of the goods protected by a PDO, in particular the interests of consumers. With regard to the Commission's complaint con-cerning the obligation on the Member States to take on their own initiative the measures necessary to penalise infringements of Article 13(1) of that regulation, the following points must be made.

It is true that, in order to ensure the effectiveness of the provisions of Regulation No 2081/92, Article 10(1) of that regulation provides that the Member States shall ensure that inspection structures are in place not later than six months after its entry into force. They are therefore obliged to create such structures.

- **It follows that the inspection structures whose task it is to ensure compliance with the PDO specification are those of the Member State from which the PDO in question comes. The responsibility for monitoring compliance with the specification when the PDO 'Parmigiano Reggiano' is used therefore does not lie with the German inspection authorities.**

It is true that Article 13(1)(b) of Regulation No 2081/92 requires that registered names be protected against 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'.

Source: **curia.europa.eu**

European Court of Justice, 26 February 2008

(V. Skouris, C.W.A. Timmermans, A. Rosas, K. Lenaerts, U. Lõhmus, J.N. Cunha Rodrigues, K. Schiemann, P. Kūris, E. Juhász, E. Levits and A. Ó Caoimh)

JUDGMENT OF THE COURT (Grand Chamber)

26 February 2008 (*)

(Failure of a Member State to fulfil obligations – Regulation (EEC) No 2081/92 – Protection of geographical indications and designations of origin for agricultural products and foodstuffs – 'Parmigiano Reggiano' cheese – Use of the name 'Parmesan' – Obligation on a Member State to proceed on its own initiative against the abuse of a protected designation of origin)

In Case C-132/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 21 March 2005,

Commission of the European Communities, represented by E. de March, S. Grünheid and B. Martenczuk, acting as Agents, with an address for service in Luxembourg,

applicant,

supported by:

Czech Republic, represented by T. Boček, acting as Agent,

Italian Republic, represented by I.M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato, with an address for service in Luxembourg,
interveners,
v
Federal Republic of Germany, represented by M. Lumma and A. Dittrich, acting as Agents, assisted by M. Loschelder, Rechtsanwalt,
defendant,
supported by:
Kingdom of Denmark, represented by J. Molde, acting as Agent, with an address for service in Luxembourg,
Republic of Austria, represented by E. Riedl, acting as Agent, with an address for service in Luxembourg,
interveners,
THE COURT (Grand Chamber),
composed of V. Skouris, President, C.W.A. Timmermans, A. Rosas, K. Lenaerts and U. Lõhmus, Presidents of Chambers, J.N. Cunha Rodrigues (Rapporteur), K. Schiemann, P. Kūris, E. Juhász, E. Levits and A. Ó Caoimh, Judges,
Advocate General: J. Mazák,
Registrar: B. Fülöp, Administrator,
having regard to the written procedure and further to the hearing on 13 February 2007,
after hearing the **Opinion of the Advocate General at the sitting on 28 June 2007**,
gives the following

Judgment

1 By its application, the Commission requests the Court to declare that, by formally refusing to proceed against the use, on its territory, of the name 'Parmesan' on the labelling of products which do not comply with the requirements of the specification for the protected designation of origin (PDO) 'Parmigiano Reggiano', thereby favouring the appropriation of the reputation of the genuine, Community-wide protected product, the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of 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).

Legal framework

2 Regulation No 2081/92 establishes Community protection of designations of origin and of geographical indications for agricultural products and foodstuffs.

3 Article 2 of Regulation No 2081/92 provides:

'1. Community protection of designations of origin and of geographical indications of agricultural products and foodstuffs shall be obtained in accordance with this Regulation.

2. 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;

...'

4 Article 3(1) of the regulation is worded as follows:

'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.

...'

5 According to Article 4(2)(g) of Regulation No 2081/92, the product specification shall include at least 'details of the inspection structures provided for in Article 10'.

6 Article 5(3) and (4) of the regulation states:

'3. The application for registration shall include the product specification referred to in Article 4.

4. The application shall be sent to the Member State in which the geographical area is located.'

7 Article 10 of the regulation provides:

'1. Member States shall ensure that not later than six months after the entry into force of this Regulation inspection structures are in place, the function of which shall be to ensure that agricultural products and foodstuffs bearing a protected name meet the requirements laid down in the specifications.

2. An inspection structure may comprise one or more designated inspection authorities and/or private bodies approved for that purpose by the Member State. Member States shall send the Commission lists of the authorities and/or bodies approved and their respective powers. The Commission shall publish those particulars in the Official Journal of the European Communities.

3. Designated inspection authorities and/or approved private bodies must offer adequate guarantees of objectivity and impartiality with regard to all producers or processors subject to their control and have permanently at their disposal the qualified staff and resources necessary to carry out inspection of agricultural products and foodstuffs bearing a protected name.

If an inspection structure uses the services of another body for some inspections, that body must offer the same guarantees. In that event the designated inspection authorities and/or approved private bodies shall, however, continue to be responsible vis-à-vis the Member State for all inspections.

As from 1 January 1998, in order to be approved by the Member States for the purpose of this Regulation, pri-

vate bodies must fulfil the requirements laid down in standard EN 45011 of 26 June 1989.

4. If a designated inspection authority and/or private body in a Member State establishes that an agricultural product or a foodstuff bearing a protected name of origin in that Member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that this Regulation is complied with. …

5. A Member State must withdraw approval from an inspection body where the criteria referred to in paragraphs 2 and 3 are no longer fulfilled. It shall inform the Commission, which shall publish in the Official Journal of the European Communities a revised list of approved bodies.

6. The Member States shall adopt the measures necessary to ensure that a producer who complies with this Regulation has access to the inspection system.

7. The costs of inspections provided for under this Regulation shall be borne by the producers using the protected name.'

8 Under Article 13 of the regulation:

'1. Registered names shall be protected against:

…

(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;

…

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.

…

3. Protected names may not become generic.'

9 According to Article 2 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 Regulation No 2081/92 (OJ 1996 L 148, p. 1) and to Part A of the annex thereto, 'Parmigiano Reggiano' is to be a PDO with effect from 21 June 1996.

Pre-litigation procedure

10 Following a complaint filed by several economic operators, the Commission requested the German authorities, by letter of 15 April 2003, to give clear instructions to the government bodies responsible for the combating of fraud to bring to an end the marketing on German territory of products designated as 'Parmesan' which did not comply with the specification for the PDO 'Parmigiano Reggiano'. Since the term 'Parmesan', according to the Commission, was a translation of the PDO 'Parmigiano Reggiano', its use constituted a breach of Article 13(1)(b) of the regulation.

11 The German Government replied by letter of 13 May 2003 that, although the term 'Parmesan' had historical roots in the region of Parma, it had become a generic name for hard cheeses of diverse origins, grated or intended to be grated, distinct from the PDO 'Parmigiano Reggiano'. For that reason, its use did not infringe Regulation No 2081/92.

12 On 17 October 2003, the Commission sent the Federal Republic of Germany a letter of formal notice, to which it replied by letter of 17 December 2003.

13 Not being satisfied by the explanations rendered by the Federal Republic of Germany, on 30 March 2004, the Commission issued a reasoned opinion inviting it to take the measures necessary to comply with the opinion within two months of its notification.

14 By letter of 15 June 2004, the Federal Republic of Germany informed the Commission that it adhered to its previous position.

15 In those circumstances, the Commission decided to bring the present action.

The action

16 By order of the President of the Court of 6 September 2005, the Italian Republic on the one hand, and the Kingdom of Denmark and the Republic of Austria, on the other hand, were given leave to intervene in support of the forms of order sought by the Commission and by the Federal Republic of Germany respectively.

17 By order of the President of the Court of 15 May 2006, the Czech Republic was given leave to intervene in support of the form of order sought by the Commission.

18 In support of its action, the Commission relies on a single ground of complaint relating to the Federal Republic of Germany's failure to proceed against the use, on its territory, of the name 'Parmesan' on the labelling of products which do not comply with the requirements of the specification for the PDO 'Parmigiano Reggiano'.

19 The Federal Republic of Germany denies the failure to fulfil obligations on three grounds:

– first, a designation of origin is protected under Article 13 of Regulation No 2081/92 only in the exact form in which it is registered;

– second, the use of the word 'Parmesan' does not infringe the protection of the designation of origin 'Parmigiano Reggiano', and

– third, it is not bound to proceed on its own motion against infringements of Article 13 of the Regulation.

Protection of compound designations

20 The Commission claims that the system of Community protection is underpinned by the principle that the registration of a designation containing several terms confers the protection of Community law both on the constituent elements of the compound designation and on the designation as a whole. The effective protection of compound designations therefore implies that, in principle, all the constituent elements of a compound designation are protected against abuse. The Commission is of the opinion that, in order to guarantee such protection, Regulation No 2081/92 does not require registration of every element of a compound designation intended to be protected, but assumes that each element enjoys intrinsic protection. That interpretation

was confirmed by the Court in **Joined Cases C-129/97 and C-130/97 Chiciak and Fol [1998] ECR I-3315**.

21 The Commission argues that the principle of the protection of all the constituent elements of a compound designation is subject to only one exception, provided for in the second indent of Article 13(1) of Regulation No 2081/92, whereby the use of a single element of a compound designation is not regarded as an infringement of Article 13(1)(a) and (b) of the regulation if the element concerned is the name of an agricultural product or of a foodstuff which is considered to be generic. That provision would be superfluous if the various constituent elements of designations registered exclusively in the form of compound designations were to be considered as not enjoying any protection.

22 Furthermore, a single constituent element of a compound designation does not enjoy the protection of Regulation No 2081/92 if the Member States concerned indicated, when notifying the compound designation at issue, that protection was not requested for certain parts of that designation.

23 The Commission took that into account when it adopted Regulation No 1107/96, by declaring as appropriate in a footnote that protection of part of the designation concerned was not requested.

24 In the case of the designation 'Parmigiano Reggiano', no footnote was inserted in relation to either of those constituent elements.

25 The Federal Republic of Germany replies that a PDO enjoys the protection of Article 13 of Regulation No 2081/92 only in the exact form in which it is registered. The opposite contention cannot be inferred from the Court's judgment in Chiciak and Fol, notwithstanding the Commission's argument to that effect.

26 Furthermore, according to the Federal Republic of Germany, in the context of **Case C-66/00 Bigi [2002] ECR I-5917**, the Italian Republic itself expressly confirmed that it had purposely not registered the designation 'Parmigiano'. In those circumstances, in the absence of registration, the designation 'Parmigiano' is not protected by Community law.

27 In that regard, the eighth recital in the preamble to Regulation No 1107/96 states that 'certain Member States have made it known that protection was not requested for some parts of designations and this should be taken into account'.

28 References in Regulation No 1107/96 to footnotes contained in its annex specify the cases in which protection of part of the designation concerned was not requested.

29 It must however be pointed out that the lack of a declaration that, for certain elements of a designation, the protection conferred by Article 13 of Regulation No 2081/92 was not requested, cannot constitute a sufficient basis for determining the scope of that protection (see, to that effect, Chiciak and Fol, paragraph 37).

30 Under the system of protection created by Regulation No 2081/92, questions concerning the protection to be accorded to the various constituent parts of a name, in particular the question whether a generic name or a constituent part protected against the practices referred to in Article 13 of that regulation may be concerned, are matters which fall for determination by the national court on the basis of a detailed analysis of the facts presented before it by the parties concerned (Chiciak and Fol, paragraph 38).

31 In those circumstances, the Federal Republic of Germany's argument that a PDO enjoys protection under Article 13 of Regulation No 2081/92 only in the exact form in which it is registered cannot succeed.

Infringement of the PDO 'Parmigiano Reggiano'

32 According to the Commission, the marketing under the name 'Parmesan' of cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' constitutes an infringement of Article 13(1)(b) of Regulation No 2081/92, since the term 'Parmesan' is the correct translation of the PDO 'Parmigiano Reggiano'. The translation, like the PDO in the language of the Member State which obtained registration of that designation, is exclusively reserved for products which comply with the specification.

33 The Commission adds that, as shown by the close connection which evolved historically between the specific geographic region of Italy where that type of cheese comes from and the term 'Parmesan', the term is not a generic name which can be distinguished from the PDO 'Parmigiano Reggiano'.

34 In any case, use of the name 'Parmesan' for a cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' constitutes an evocation of that PDO, which is prohibited by Article 13(1)(b) of Regulation No 2081/92.

35 The Commission also submits that the term 'Parmesan' has not become a generic name.

36 Of course, a geographical designation could, over time and through use, become a generic name in the sense that consumers cease to regard it as an indication of the geographical origin of the product, and come to regard it only as an indication of a certain type of product. That shift in meaning occurred for instance in the case of the designations 'Camembert' and 'Brie'.

37 Nevertheless, it is the Commission's view that the term 'Parmesan' has never lost its geographical connotation. Were 'Parmesan' really a neutral term without such a connotation, there would be no plausible explanation for the persistent efforts of manufacturers of imitations to establish through words or images a link between their products and Italy.

38 Moreover, according to the Commission, the fact that up until the year 2000 a cheese called 'Parmesan', which did not comply with the specification for the PDO 'Parmigiano Reggiano', was produced on Italian territory does not indicate that the term 'Parmesan' is the generic name in Italy for hard cheeses of diverse origin, because the cheese in question was exclusively intended for export to countries where the term 'Parmesan' did not enjoy any particular protection, in accordance with the principle of territoriality. Moreover, it is only since 21 June 1996, the date when Regulation No 1107/96 entered into force, that the

name 'Parmigiano Reggiano' has been protected at Community level.

39 The Federal Republic of Germany contends that the use of the word 'Parmesan' does not infringe Article 13(1)(b) of Regulation No 2081/92, given that it is only a translation, in the opinion of the Commission, of the term 'Parmigiano', which, as illustrated by the situation in Italy and in other Member States and equally by national and Community legislation, is a generic name. As a generic name, it cannot be protected under the regulation.

40 In the alternative, the German Government submits that, even if the term 'Parmigiano' is not a generic name, to which therefore the provisions of the second indent of Article 13(1) of Regulation No 2081/92 do not apply, use of the term 'Parmesan' does not infringe the provisions concerning the protection of the designation of origin 'Parmigiano Reggiano'. The name 'Parmesan' has evolved, over centuries, in a particular way and has become, in Germany, but also in other Member States, a generic name. Its use does not therefore constitute a misuse or evocation of the PDO 'Parmigiano Reggiano'.

41 To substantiate that contention, the Federal Republic of Germany refers, first, to point 35 of the Opinion of Advocate General Ruiz-Jarabo Colomer in Case C-317/95 Canadane Cheese Trading and Kouri [1997] ECR I-4681, second, to Bigi, in which the Court expressly left open the question whether the term 'Parmesan' is a generic designation, and third, to the fact that it is not sufficient to find that the name of a product is the translation of a designation of origin. It is necessary to examine in each particular case whether that translation really amounts to an evocation of the designation at issue. That is not the case where the name at issue, while originally a translation, has, with the passage of time, taken on another meaning in the ordinary usage of consumers, thus becoming a generic name. Fourth, the Federal Republic of Germany relies on the fact that in Germany – the only Member State in which the generic quality of the term 'Parmesan' is decisive given the present infringement proceedings – the word 'Parmesan' has always been understood as the generic name of a hard cheese grated or intended to be grated. Moreover, that is also the situation in other Member States, including Italy.

42 It is necessary, first, to establish whether use of the name 'Parmesan' corresponds, with regard to the PDO 'Parmigiano Reggiano', to one of the situations referred to in Article 13(1) of Regulation No 2081/92.

43 In that regard, it should be pointed out that, under Article 13(1)(b) of that regulation, registered names are protected against any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated.

44 With regard to the evocation of a PDO, the Court has held that that term covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image brought to his mind is that of the product whose designation is protected (**Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola [1999] ECR I-1301**, paragraph 25).

45 The Court has pointed out that it is possible for a PDO to be evoked where there is no likelihood of confusion between the products concerned and even where no Community protection extends to the parts of that designation which are echoed in the term or terms at issue (Consorzio per la tutela del formaggio Gorgonzola, paragraph 26).

46 In the present case, there is phonetic and visual similarity between the names 'Parmesan' and 'Parmigiano Reggiano', and that in a situation where the products at issue are hard cheeses, grated or intended to be grated, namely, where they have a similar appearance (see, to that effect, Consorzio per la tutela del formaggio Gorgonzola, paragraph 27).

47 In addition, regardless whether the name 'Parmesan' is or is not an exact translation of the PDO 'Parmigiano Reggiano' or of the term 'Parmigiano', the conceptual proximity between those two terms emanating from different languages, which was revealed in discussions before the Court, must also be taken into account.

48 That proximity and the phonetic and visual similarities referred to in paragraph 46 above are such as to bring to the mind of the consumer the cheese protected by the PDO 'Parmigiano Reggiano', when he is confronted by a hard cheese, grated or intended to be grated, bearing the name 'Parmesan'.

49 In those circumstances, the use of the name 'Parmesan' must be regarded, in the sense of Article 13(1)(b) of Regulation No 2081/92, as an evocation of the PDO 'Parmigiano Reggiano'.

50 The question whether the name 'Parmesan' is a translation of the PDO 'Parmigiano Reggiano' is therefore of no relevance for the assessment of the present action.

51 The Federal Republic of Germany nevertheless submits that, since the name 'Parmesan' has become a generic name, its use cannot amount to an unlawful evocation of the PDO 'Parmigiano Reggiano'.

52 It is for the Federal Republic of Germany to prove that argument to be well founded, all the more so because the Court has already held that it is far from clear that the designation 'Parmesan' has become generic (Bigi, paragraph 20).

53 When assessing the generic character of a name, the Court has held that it is necessary, under Article 3(1) of Regulation 2081/92, to take into account the places of production of the product concerned both inside and outside the Member State which obtained the registration of the name at issue, the consumption of that product and how it is perceived by consumers inside and outside that Member State, the existence of national legislation specifically relating to that product, and the way in which the name has been used in Community law (see Joined Cases C-465/02 and C-466/02 Germany and Denmark v Commission [2005] ECR I-9115, paragraphs 76 to 99).

54 As indicated by the Advocate General in points 63 and 64 of his Opinion, the Federal Republic of Germany restricted itself to providing quotations from dictionaries and specialist literature which do not provide any comprehensive view of how the word 'Parmesan' is perceived by consumers in Germany and other Member States, and failed even to give any figures as to the production or consumption of the cheese marketed under the name 'Parmesan' in Germany or in other Member States.

55 According to the documents in the case, in Germany, certain producers of cheese called 'Parmesan' market that product with labels referring to Italian cultural traditions and landscapes. It is legitimate to infer from this that consumers in that Member State perceive 'Parmesan' cheese as a cheese associated with Italy, even if in reality it was produced in another Member State (see to that effect Germany and Denmark v Commission, paragraph 87).

56 Finally, at the hearing, the Federal Republic of Germany was also unable to provide information on the quantity of cheese produced in Italy under the PDO 'Parmigiano Reggiano' and imported into Germany, making it impossible for the Court to use the factors relating to the consumption of that cheese as indicators of the generic character of the name 'Parmesan' (see, to that effect, Germany and Denmark v Commission, paragraph 88).

57 Since the Federal Republic of Germany has therefore failed to show that the name 'Parmesan' has become generic, use of the word 'Parmesan' for cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' must be regarded for the purposes of the present proceedings as infringing the protection provided for that PDO under Article 13(1)(b) of Regulation No 2081/92 .

Obligation on the Federal Republic of Germany to proceed against infringements of Article 13(1) of Regulation No 2081/92

58 The Commission contends that the Federal Republic of Germany is bound, under Articles 10 and 13 of Regulation No 2081/92, to take on its own initiative the measures necessary to deal with conduct which infringes a PDO. According to the Commission, Member State intervention should include administrative and penal measures such as to enable the objectives referred to in that regulation concerning the protection of designations of origin to be achieved. Products which do not comply with the requirements of the regulation cannot be marketed.

59 The Commission points out that its complaints are directed not at the German legislation or at any lack of a right of action before the national courts, but at the administrative practice of the German authorities which is contrary to Community law. If the Member States were exempted from their obligation to intervene and if, as a consequence, economic operators themselves had to bring legal proceedings each time their exclusive right to use the PDO at issue throughout the territory of the European Union were infringed, the objectives of Regulation No 2081/92 could not be achieved.

60 Again from the point of view of the Commission, the central question in legal proceedings between private economic operators is that of compliance with the intellectual property rights enjoyed by the producers established in the region of origin of the product concerned, whereas the purpose of action by the public authorities against infringements of Article 13 of Regulation No 2081/92 is not to protect private economic interests but those of consumers, whose expectations as to the quality and geographic origin of that product should not be disappointed. The protection of consumers intended by the regulation would be compromised if the enforcement of the prohibitions laid down by the regulation were completely dependent on the taking of legal action by private economic operators.

61 The Commission concludes that the Federal Republic of Germany's conduct must be treated as an infringement of Community law by omission.

62 For its part, the Federal Republic of Germany submits that Article 13 of Regulation No 2081/92 determines the scope of protection of registered geographical indications and designations of origin. Owing to the direct applicability of the regulation, that article confers rights on holders or legitimate users of the PDO which the national courts must protect.

63 The direct applicability of Regulation No 2081/92 admittedly does not release the Member States from the obligation to take national measures in order to ensure the application of the regulation. In fact, the Federal Republic of Germany has adopted numerous legislative provisions enabling action to be taken against the unlawful use of a PDO, in particular the Law against unfair competition (Gesetz gegen den unlauteren Wettbewerb) of 7 June 1909 and the Law on trade marks and other distinctive signs (Gesetz über den Schutz von Marken und sonstigen Kennzeichen) of 25 October 1994 (BGBl. 1994 I, p. 3085).

64 Moreover, the possibility of taking legal action in respect of any conduct that would be contrary to the rights derived from a PDO is not reserved solely to the holder of that designation. That possibility is, on the contrary, open to competitors, business associations and consumer organisations. The very large class of persons entitled to bring an action suffices to demonstrate that the provisions in force in the Federal Republic of Germany are not limited to enabling producers established in the region of origin of the product concerned to enforce their intellectual property rights. Those provisions establish a general and efficient system which makes it possible to prevent infringements of Article 13 of Regulation No 2081/92 and to punish them effectively by means of judicial decisions.

65 By granting those civil law rights, the Federal Republic of Germany has taken all the measures necessary to guarantee full application of Article 13(1) of Regulation No 2081/92. It is not necessary for the public authorities to take administrative action on their own initiative against infringements of that provision, and that is also not required under Articles 10 and 13 of the regulation. According to the Federal Republic of Germany, it follows from a comparison of the different

language versions of Article 10(4) of Regulation No 2081/92 that, given the Italian origin of the PDO 'Parmigiano Reggiano', it is the Consorzio del formaggio Parmigiano Reggiano and not the German inspection structures which must ensure compliance with the specification for that designation when it is used.

66 According to the Federal Republic of Germany, while the Commission observes that the action taken by the Member State concerned against infringements of Article 13 of Regulation No 2081/92 must ensure not only the protection of private economic interests but also that of consumers, that does not stem from any particularity of the regulation of such a kind as to render insufficient – in contrast to the position regarding other intellectual property rights or regarding competition law – the system of protection of designations of origin by providing civil law remedies.

67 Finally, the Federal Republic of Germany contends that if, in Germany, use of the name 'Parmesan' for products which do not comply with the requirements of the specification for the PDO 'Parmigiano Reggiano' is not subject to proceedings brought on the authorities' initiative or to criminal penalties, even supposing that such use infringes Article 13(1) of Regulation No 2081/92, that situation arises simply because of a decision not to use some penalties which the Member States may impose, but are not obliged to impose, in compliance with the current state of Community law.

68 In that regard, it should be pointed out that the right of individuals to rely on the provisions of a regulation before their national courts cannot release the Member States from their duty to take the national measures which may be needed to ensure its full application (see, inter alia, Case 72/85 Commission v Netherlands [1986] ECR 1219, paragraph 20).

69 It is not disputed that the German legal system provides legal instruments such as the legislative provisions mentioned in paragraph 63 above which are designed to ensure the effective protection of the rights which individuals derive from Regulation No 2081/92. It is also not disputed that the possibility of taking legal action against any conduct that might infringe the rights derived from a PDO is not reserved solely to the legitimate user of that designation. It is, on the contrary, open to competitors, business associations and consumer organisations.

70 In those circumstances, such legislation is capable of guaranteeing the protection of interests other than those of the producers of the goods protected by a PDO, in particular the interests of consumers.

71 At the hearing, the Federal Republic of Germany moreover pointed out that several cases concerning the use in Germany of the name 'Parmesan' are currently pending before the German courts, one of which was brought by the Consorzio del formaggio Parmigiano Reggiano.

72 With regard to the Commission's complaint concerning the obligation on the Member States to take on their own initiative the measures necessary to penalise infringements of Article 13(1) of that regulation, the following points must be made.

73 First of all, there is no such obligation under Article 10 of Regulation No 2081/92.

74 It is true that, in order to ensure the effectiveness of the provisions of Regulation No 2081/92, Article 10(1) of that regulation provides that the Member States shall ensure that inspection structures are in place not later than six months after its entry into force. They are therefore obliged to create such structures.

75 Nevertheless, Article 10(4) of Regulation No 2081/92, by providing that '[i]f a designated inspection authority and/or private body in a Member State establishes that an agricultural product or a foodstuff bearing a protected name of origin in that Member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that this Regulation is complied with …', indicates that the designated inspection authority and/or private body in a Member State is that of the Member State from which the PDO comes.

76 The reference to the 'producers or processors subject to their control' in Article 10(3) of that regulation, like the producers' right of access to the inspection system provided for in Article 10(6) and their obligation under Article 10(7) to bear the costs of the inspections, confirm that Article 10 of Regulation No 2081/92 concerns the obligations of the Member States from which the PDO comes.

77 That interpretation is further reinforced by the provisions of Articles 4(2)(g) in conjunction with Article 5(3) and (4) of Regulation No 2081/92, which require that the application for registration includes the specification, that that application is addressed to the Member State in which the geographical area is located, and that the specification includes 'details of the inspection structures provided for in Article 10'.

78 It follows that the inspection structures whose task it is to ensure compliance with the PDO specification are those of the Member State from which the PDO in question comes. The responsibility for monitoring compliance with the specification when the PDO 'Parmigiano Reggiano' is used therefore does not lie with the German inspection authorities.

79 It is true that Article 13(1)(b) of Regulation No 2081/92 requires that registered names be protected against 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'.

80 Nevertheless, the Commission has not demonstrated that the Federal Republic of Germany has failed to comply with the obligations under Regulation No 2081/92, and it has not furnished proof that measures such as those referred to in paragraph 63 above were not taken or were not such as to protect the PDO 'Parmigiano Reggiano'.

81 In the light of all the foregoing, it must be held that the Commission has not established that, by formally refusing to proceed against the use on its territory of the name 'Parmesan' on the labelling of products

which do not comply with the requirements of the specification for the PDO 'Parmigiano Reggiano', the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of Council Regulation (EEC) No 2081/92.

82 The action brought by the Commission must therefore be dismissed.

Costs

83 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the Federal Republic of Germany has applied for costs and the Commission has been unsuccessful in all its pleas, the Commission must be ordered to pay the costs. In accordance with Article 69(4), the Czech Republic, the Kingdom of Denmark, the Italian Republic and the Republic of Austria must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. Dismisses the action;
2. Orders the Commission of the European Communities to pay the costs;
3. Orders the Czech Republic, the Kingdom of Denmark, the Italian Republic and the Republic of Austria to bear their own costs.

OPINION OF ADVOCATE GENERAL
Mazák

delivered on 28 June 2007 (1)
Case C-132/05
Commission of the European Communities
v
Federal Republic of Germany
(Designations of origin – Cheese – 'Parmigiano Reggiano' – Use of the designation 'Parmesan' – Failure of a Member State to act ex officio to safeguard a protected designation of origin)

1. In the present case the Commission seeks a declaration under Article 226 EC that, by formally refusing to prosecute on its territory the placing on the market of cheese, under the designation 'Parmesan', which does not comply with the specification for the protected designation of origin ('PDO') 'Parmigiano Reggiano', Germany infringes Article 13(1)(b) of 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 (2) (the 'Basic Regulation').

2. Does the protection granted to the registered PDO 'Parmigiano Reggiano' extend to the German word 'Parmesan'? This question lies at the heart of the present infringement proceedings brought by the Commission against Germany.

3. Moreover, the present case also raises the question of the measures which Member States are required to take in order to enforce the protection provided by the Basic Regulation. Assuming the protection granted to the registered PDO 'Parmigiano Reggiano' extends to the German word 'Parmesan', is a Member State required to prosecute ex officio an infringement of the Basic Regulation such as the marketing under the name 'Parmesan' of cheese which does not comply with the specification for 'Parmigiano Reggiano'?

I – Protection of 'Parmigiano Reggiano' under Community law

A – Regulation No 2081/92

4. Article 2 of Regulation No 2081/92 provides:

'1. Community protection of designations of origin and of geographical indications of agricultural products and foodstuffs shall be obtained in accordance with this Regulation.

2. 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 …'

5. Article 3(1) provides:

'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 of registration is rejected because a name has become generic, the Commission shall publish that decision in the Official Journal of the European Communities.'

6. Article 10 provides:

'1. Member States shall ensure that not later than six months after the entry into force of this Regulation inspection structures are in place, the function of which shall be to ensure that agricultural products and foodstuffs bearing a protected name meet the requirements laid down in the specifications.

…

4. If a designated inspection authority and/or private body in a Member State establishes that an agricultural product or a foodstuff bearing a protected name of origin in that Member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that this Regulation is complied with. They shall inform the Member State of the measures taken in carrying out their inspections. The parties concerned must be notified of all decisions taken.'

7. Article 13 states:

‘1. Registered names shall be protected against:

…

(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;

…

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.

…

3. Protected names may not become generic.’

B – Registration of ‘Parmigiano Reggiano’

8. The designation ‘Parmigiano Reggiano’ was registered as a designation of origin pursuant to Article 2 and Title A of the Annex to Commission Regulation (EC) No 1107/96 (3) (the ‘Registration Regulation’) with effect from 21 June 1996.

9. The designation ‘Parmigiano Reggiano’ was registered under the simplified procedure laid down in Article 17 of the Basic Regulation. This simplified procedure only applied to registrations requested within six months of the entry into force of the Basic Regulation. It was intended to give Community-wide protection to those designations which already existed before the entry into force of the Basic Regulation, either because they enjoyed legal protection under the national law of Member States, or for those Member States which did not have a protection system, because the designation had been established by usage. Under the simplified procedure a registration was exempt from the objection phase required by Article 7 of the Basic Regulation under the normal procedure.

II – Pre-litigation procedure

10. Following a complaint filed by several economic operators, the Commission requested the German authorities, by letter of 15 April 2003, to give clear instructions to the government agencies responsible for the prosecution of fraud to bring to an end the marketing of products designated as ‘Parmesan’ which did not conform to the mandatory specification for the registered designation ‘Parmigiano Reggiano’ on German territory. The term ‘Parmesan’ was, according to the Commission, the translation of the registered designation ‘Parmigiano Reggiano’, and its use thus constituted a breach of Article 13(1)(b) of the Basic Regulation.

11. In its response, the German Government contended that, although the term ‘Parmesan’ had historically originated in the region of Parma, it had become generic and was used to designate hard cheeses of diverse geographical origins, grated or intended to be grated. Therefore the term ‘Parmesan’ is different from the designation ‘Parmigiano Reggiano’ and its use does not constitute a breach of the Basic Regulation.

III – Procedure before the Court and forms of order sought

12. As the parties maintained their positions in the course of the pre-litigation proceedings, the Commission decided to bring the present action before the Court and claims that the Court should:

– declare that, by formally refusing to prosecute, on its territory, the use of the name ‘Parmesan’ for the labelling of products which do not conform to the specification for the protected designation of origin ‘Parmigiano Reggiano’ and thus promoting the exploitation of the reputation of the genuine, Community-wide protected product, the Federal Republic of Germany has failed to fulfil its obligations under Article 13(1)(b) of 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;

– order the Federal Republic of Germany to pay the costs of the proceedings.

IV – Preliminary remarks

13. In the present case, it will first be necessary to determine whether the use of the term ‘Parmesan’ for the labelling of products which do not conform to the specification for the protected designation of origin ‘Parmigiano Reggiano’ by economic operators in Germany constitutes a breach of the Article 13(1)(b) of the Basic Regulation. In this connection Germany has in particular raised the defence that ‘Parmesan’ has become a generic name, which cannot therefore be protected by the registration of the PDO ‘Parmigiano Reggiano’.

14. I will then examine whether Germany has infringed its obligations arising from Article 13(1)(b) of the Basic Regulation by failing to take ex officio action against a situation which, in the view of the Commission, constitutes an infringement of Community law by private parties, that is to say, the use of the name ‘Parmesan’ for the labelling of products which do not conform to the specification for the PDO ‘Parmigiano Reggiano’. The answer to this question will help to clarify the scope of the obligation imposed on Member States under the Basic Regulation to ensure compliance on their territory with that Regulation.

V – Is the name ‘Parmesan’ protected as a consequence of the registration of the PDO ‘Parmigiano Reggiano’?

A – Main submissions of the parties

1. Commission

15. The Commission, supported by the Italian Government, submits that the term ‘Parmesan’ is the correct translation of the designation of origin ‘Parmigiano Reggiano’. The translation, just like the protected designation of origin in the language of the state of origin, is exclusively reserved for products complying with the mandatory specification. The history of the designation ‘Parmigiano Reggiano’ shows the close link between the cheese, the region where it is produced and the name ‘Parmesan’, which is therefore by no means a generic name.

16. However, even if ‘Parmesan’ is not assumed to be the translation of the complete PDO ‘Parmigiano Reggiano’, the word ‘Parmesan’ is nevertheless the lit-

eral translation of the word 'Parmigiano' into French, from which it passed centuries ago into German and other languages. The translation of the constituent element 'Parmigiano' is protected because, under Community law, the registration of a designation containing several terms confers the same protection on the constituent elements as on the compound designation as a whole. Thus the Basic Regulation does not require the registration of each of the individual elements intended to be protected within a compound designation, but assumes that each element is protected. This means that even if Parmesan is not considered to be the translation of the PDO 'Parmigiano Reggiano' but only the literal translation of its constituent element 'Parmigiano', its translation 'Parmesan' is necessarily protected as a consequence of the protection of the designation 'Parmigiano Reggiano'.

17. It is only where the Member State concerned indicates in the course of the registration procedure of a compound designation to the Commission that the protection is not requested for certain parts of the designation, that a constituent element of a compound designation would, used on its own, not benefit from the protection granted by the Basic Regulation. The Commission would then have had to take this into account when passing the Registration Regulation by declaring in a footnote that protection for a given constituent element of a compound designation was not requested. In the case of the designation of origin 'Parmigiano Reggiano', neither of the two constituent elements was however the subject of such a footnote.

18. Furthermore there are no valid reasons for Germany's view that the expression 'Parmigiano' is, when used alone, to be regarded, in the sense of Article 3 of the Basic Regulation, as a generic name which the consumer does not associate with a specific geographical area. Moreover, the translation 'Parmesan' has not evolved to become a generic term.

19. Of course, a geographical designation could, over time and through use, become a generic term in the sense that consumers come to regard it as an indication of a certain type of product rather than as an indication of the geographical origin of the product, as occurred for instance in the case of the designations 'Camembert' and 'Brie'.

20. In the present case, however, the Commission points out that historically there has always been a close connection between the particular geographical region of Italy, where the cheese comes from, and the term 'Parmesan', a fact which demonstrates that the term has never, at any point in time, lost its geographical connotation. Therefore the name Parmesan is not a generic term which can be distinguished from the protected designation of origin 'Parmigiano Reggiano'.

21. If the name 'Parmesan' were really a neutral term without such a connotation, there would be no plausible explanation for the efforts of manufacturers of imitations to establish through words or images a link between their products and Italy.

22. Moreover, the fact that up until the year 2000 cheese called 'Parmesan', which did not comply with the mandatory specification for 'Parmigiano Reggiano', was produced on Italian territory does not indicate that the term was a generic term in Italy for hard cheeses of diverse origin, because the cheese in question was exclusively intended for export to countries where the term 'Parmesan' did not enjoy any particular protection, according to the principle of territoriality of protection. In any event it is only since 21 June 1996, the date when the Registration Regulation entered into force, that the designation 'Parmigiano Reggiano' has been protected at Community level.

23. The use of the designation 'Parmesan' for a cheese which does not conform to the specification for 'Parmigiano Reggiano' would in any event constitute an evocation of that PDO, which is prohibited by Article 13(1)(b) of the Basic Regulation.

24. Accordingly, the placing on the market, under the designation 'Parmesan', of cheese which does not comply with the mandatory specification constitutes an infringement of Article 13(1)(b) of the Regulation.

2. The German Government

25. The German Government, supported by the Danish and Austrian Governments, submits that 'Parmesan' is not the translation of the PDO 'Parmigiano Reggiano' into German but a generic name used to designate a category of hard cheeses, grated and intended to be grated, which includes, amongst others, 'Parmigiano Reggiano'.

26. A designation of origin is only subject to the protection of Article 13 of the Basic Regulation in the exact form in which it is registered. A contrary inference cannot be drawn from the Court's decision in Chiciak and Fol. (4)

27. Since 'Parmesan' is the literal translation, even in the opinion of the Commission, of the term 'Parmigiano', the use of the word 'Parmesan' does not infringe the protection granted by Article 13(1)(b) of the Basic Regulation to the designation 'Parmigiano Reggiano'.

28. Furthermore, in the context of the Court's decision in Bigi, (5) the Italian Government had itself expressly confirmed that it had purposely not registered the designation 'Parmigiano'. Under these circumstances, in the absence of a registration, the designation 'Parmigiano' cannot on its own enjoy protection under Community law.

29. In this connection it must also be pointed out that, as illustrated by the situation in Italy and other Member States as well as by legislation at national and Community level, the expression 'Parmigiano' is, when used alone, to be regarded as a generic name in the sense of Article 3 of the Basic Regulation. Therefore, according to Article 13(1), second sentence, of the Basic Regulation, the term 'Parmigiano' cannot benefit from the protection of the Basic Regulation because of its generic character.

30. In any event, what is decisive in the context of infringement proceedings is whether the word 'Parmesan' is regarded as a generic term in Germany and it is clear that the word 'Parmesan' has in Germany always

been a generic designation for hard cheeses, grated or intended to be grated.

31. In the alternative, the German Government submits that, even if the term 'Parmigiano' were not regarded as a generic designation, the use of the translation 'Parmesan' would still not automatically constitute a misuse of the PDO 'Parmigiano Reggiano'. The use of a translation of a PDO and a fortiori of individual elements of a PDO constitutes a violation of Article 13(1)(b) only if that translation in fact constitutes an evocation of that PDO.

32. There was no such evocation in the case of the name 'Parmesan', which has undergone an evolution independent of the designation 'Parmigiano Reggiano' and over centuries become a generic designation in the common language of consumers. This evolution is peculiar to this designation and occurred in Germany, and in other Member States. Therefore the use of the term 'Parmesan' does not constitute a misuse or evocation of the protected designation 'Parmigiano Reggiano'.

B – Appraisal

1. The principle: a wide protection

33. As a result of the registration of the designation 'Parmigiano Reggiano', its use is exclusively reserved to manufacturers operating in a limited geographical area of Italy and who produce this cheese conforming to the mandatory specification for that PDO.

34. The scope of the protection granted to PDOs under Community law is wide. (6) That protection is laid down in Article 13 of the Basic Regulation. According to Article 13(1)(b), a registered designation is protected against 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.

2. Limitation: the generic character of a name

35. An important limitation to the scope of protection granted to registered PDOs consists in the fact that generic names do not fall under the protection granted by the Basic Regulation.

36. According to Article 3(1) of the Basic Regulation, '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'.

37. Thus, with respect to geographical indications, this implies a process of generalisation or erosion of a name which refers to a place, most likely where a given foodstuff was originally produced. Examples of geographical names which have undergone such a process are 'Roquefort' (named after a town in France) or 'Edam cheese' (named after a town in the Netherlands).

38. Under the Basic Regulation the generic character of a term is mentioned in three connections. First, the regulation provides that generic terms may not be registered (Article 3(1)); second, protected names may not become generic (Article 13(3)); and, third, the generic elements of a registered designation are not protected (Article 13(1), second sentence).

39. In the present case the first and second issues, relating to the scope of Article 3(1) and Article 13(3) respectively, are not debated, because what was registered was the designation 'Parmigiano Reggiano', which as such is not claimed to be generic and the registration of which has thus not been questioned.

40. In the present case it is claimed that the words 'Parmesan' and 'Parmigiano' are generic but no such claim is made as regards the registered PDO 'Parmigiano Reggiano' as a whole. Thus it is in the context of Article 13(1), second sentence, which excludes the protection of generic elements of compound PDOs, that the question of the generic character arises in the present case. This legal context is different from that in the Feta line of cases where what was in question was the generic character of the designation submitted for registration.

3. Does the term 'Parmesan' fall within the scope of the protection provided for by Article 13 of the Basic Regulation?

41. A designation is usually registered in the language of the State of origin of the PDO. Thus, for example, France has registered the PDO 'Camembert de Normandie' and Germany the PDO 'Altenburger Ziegenkäse'. The translations of PDOs into other official languages of the EU are not separately registered unless several languages are used in the area of production of the products bearing the PDO. In this case the PDO will normally be registered in the languages used in the area of production of the products bearing the PDO.

42. Since the translations of PDOs are, as a general rule, not registered, this raises the question whether a translation of a PDO is protected to the same extent as the registered PDO itself. It appears from the wording ('even if … the protected name is translated') of Article 13(1)(b) that translations of registered PDOs are in principle protected to the same extent as the PDO in the original language. Moreover, this approach is in my view supported by the Court's decision in Bigi, where the Court assumed that the protection afforded by Article 13(1)(b) of the Basic Regulation equally applied to translations of PDOs. (7)

43. However, the Basic Regulation is silent as to how to determine what constitutes a translation of a PDO. This question is unlikely to raise difficulties very often, as in most cases either the PDO will not be translated but used in the form used in the language of the country of origin of the PDO or the translation will be so literal that no doubt may arise.

44. This is not so in the present case. While it is undisputed that 'Parmigiano Reggiano' was registered according to the simplified procedure laid down by Article 17 of the Basic Regulation and that it benefits from the protection laid down in Article 13 of the Basic Regulation, it is disputed whether 'Parmesan' is to be regarded as the translation, within the meaning of the Basic Regulation, of the PDO 'Parmigiano Reggiano',

and should therefore benefit as such from the protection granted by the Basic Regulation.

45. In Bigi (8) the question whether 'Parmesan' was the accurate translation of 'Parmigiano Reggiano' was brought before the Court by means of a plea of inadmissibility.

46. Advocate General Léger took the view that given the historical and etymological evolution of the designation, it could be considered that 'Parmesan' was the 'faithful' rather than the literal translation of the PDO and that the names 'Parmigiano' or 'Parmesan' and 'Parmigiano Reggiano' were interchangeable or equivalent. (9)

47. The Court, however, merely indicated that a majority of the Member States which submitted written observations (10) assumed that 'Parmigiano Reggiano' and 'Parmesan' were equivalent and declared that it was far from clear that 'Parmesan' had become generic. (11) On this basis it rejected the plea of inadmissibility submitted by Germany.

48. For the purpose of the present case, it may be pointed out that it is not disputed between the parties that Parmesan is not the literal translation into German of 'Parmigiano Reggiano' but that it is a name derived from the translation into French of 'Parmigiano', one constituent element of the PDO 'Parmigiano Reggiano'. What is in dispute however is whether, as the Commission contends, 'Parmesan' is also the German translation, borrowed from the French language, of the designation of origin 'Parmigiano Reggiano'.

49. In my view, for 'Parmesan' to be considered a translation of 'Parmigiano Reggiano' within the meaning of Article 13(1)(b) of the Basic Regulation, these two terms must generally be regarded by consumers as equivalent.

50. While the quotations provided by the Commission in the course of the proceedings show that the name 'Parmesan' was initially derived from the designation 'Parmigiano', which designated a cheese produced in the region of Parma, they do not show that the word 'Parmesan' is still regarded as equivalent to the designation 'Parmigiano Reggiano', which refers exclusively to a certain type of cheese produced in Emilia-Romagna. The packaging material produced by the Commission merely demonstrates that consumers may possibly relate the word 'Parmesan' to Italy, the country of origin of the PDO 'Parmigiano Reggiano'.

51. Germany, however, in support of its argument that 'Parmesan' is not the translation of the PDO 'Parmigiano Reggiano', submits in particular that in a bilateral Convention between Italy and Austria of 1954 'Parmigiano Reggiano' was translated into German as 'Parmigiano Reggiano' and not as 'Parmesan'. Although this Convention is no longer in force as it has been supplanted by the Basic Regulation, it constitutes factual evidence as to how the designation 'Parmigiano Reggiano' has been translated into German, by mutual agreement between Italy and Austria, after the Italian legislature decided to protect the designation 'Parmigiano Reggiano' by law.

52. In my view the evidence put forward by the parties does not allow me to conclude with certainty that 'Parmesan' is the equivalent and therefore the translation of 'Parmigiano Reggiano'. It can only be established with certainty that the terms 'Parmesan' and 'Parmigiano' are equivalent and thus translations of each other.

53. In any event, regardless of whether the word 'Parmesan' is the translation of the PDO 'Parmigiano Reggiano', I consider that 'Parmesan' may constitute an evocation of the PDO 'Parmigiano Reggiano' within the meaning of Article 13(1)(b) and therefore falls within the scope of the protection granted by the Basic Regulation to the PDO 'Parmigiano Reggiano'.

54. Article 13(1)(b) prohibits the 'evocation' of a PDO 'even if the true origin of the product is indicated'.

55. The Court has held that the term 'evocation', as referred to in Article 13(1)(b) of the Basic Regulation, covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected. (12)

56. According to the Court's case-law, it is possible for a protected designation to be evoked where there is no likelihood of confusion between the products concerned and even where no Community protection extends to the parts of that designation which are echoed in the term or terms at issue. (13) An indication of the true origin of the product on its packaging has no bearing on the question whether there was a misuse, imitation or evocation, as Article 13(1)(b) expressly provides. (14)

57. When confronted with the question whether the use of the trademark 'Cambozola' was to be regarded as an evocation of the PDO 'Gorgonzola', the Court considered visual similarity (the product at issue was a soft blue cheese which is not dissimilar in appearance to 'Gorgonzola') and phonetic similarity (the term used to designate that product ends in the same two syllables and contains the same number of syllables) to be essential considerations for determining whether there is an evocation. (15)

58. In the present case, there is phonetic similarity between the PDO 'Parmigiano Reggiano' and the word 'Parmesan', since it contains the same four first letters and is, as agreed by the parties, the translation of one of its constituent parts, namely 'Parmigiano'. There is also visual similarity, since the two words are used for the same kind of hard cheese which is grated or intended to be grated.

59. Therefore the term 'Parmesan' would appear in principle to constitute an evocation of the PDO 'Parmigiano Reggiano'.

60. The German Government claims however that the term 'Parmesan' cannot be regarded as an evocation of the PDO 'Parmigiano Reggiano' since 'Parmesan' is a generic term. It follows that it must be determined whether Germany has provided sufficient evidence to substantiate this claim on the basis of Article 13(1),

second sentence, of the Basic Regulation under which generic elements of PDOs are not protected. (16)

61. In Denmark and Others v Commission ('Feta I') the Court held 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. (17)

62. In Germany and Denmark v Commission (18) ('Feta II') the Court assessed the generic character of the name 'feta' in particular on the basis of (i) the production situation inside and outside the country of origin of the designation; (ii) the consumption of feta and the perception of consumers inside and outside the country of origin of the designation, (iii) the existence of national legislation specifically relating to feta, and (iv) the way the name was used under Community legislation. The Court held that several relevant and important factors indicated that the term has not become generic. In fact the essential elements seem to have been the concentration of production and consumption in Greece as well as the association in the mind of consumers between 'feta' and a cheese originating in Greece.

63. In the present case, the parties submitted some empirical evidence as to the generic or non-generic character of the word 'Parmesan'. The Court has not been provided with any figures as to the production or consumption of 'Parmigiano Reggiano' in Italy, or of cheese marketed elsewhere as 'Parmesan', whether in Germany or in other Member States of the European Union.

64. The parties merely provided quotations from dictionaries and specialist literature, which do not provide any comprehensive view on how the word 'Parmesan' is perceived by consumers in Germany and beyond.

65. Another piece of evidence submitted was in the form of packaging and marketing material which shows that some producers of cheese which is marketed under the name 'Parmesan' but which does not comply with the specification for the PDO 'Parmigiano Reggiano' try to establish a connection between their product and Italy but not with the actual region where 'Parmigiano Reggiano' is produced. It is however doubtful whether the mere association between the product and the Member State of origin of the PDO at issue is, in the present case, (19) sufficient to prove that a name has or has not become generic.

66. As to the status of the name 'Parmesan' under the national law of the Member States, the Court lacks a general overview as to the existence of legislation on Parmesan or the use of the word 'Parmesan' in the national legislation of other Member States. Germany only submitted data on one piece of foreign legislation, namely Austrian legislation, where the word 'Parmesan' appears to be used as a generic term.

67. It follows that Germany has not even produced evidence to substantiate to any great extent its argument that the name 'Parmesan' has become generic in Germany. For that purpose, it would in my view have been useful to produce inter alia comprehensive information on consumers' perception of the name 'Parmesan', for example in the form of a consumer survey, and consumption and production data concerning cheese marketed as 'Parmigiano Reggiano' and as 'Parmesan'. It would however be unrealistic to require a Member State to provide complete proof that a word has become generic beyond its own territory.

C – Conclusion

68. Since Germany, which raised the generic nature of the term 'Parmesan' as a defence in the present proceedings, has failed to produce, even in respect of Germany, evidence to substantiate to any great extent its argument that the name 'Parmesan' has become generic, the use of the word 'Parmesan' for cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' must be regarded for the purposes of the present proceedings as infringing the protection provided for that PDO in accordance with Article 13(1)(b) of the Basic Regulation.

69. It is therefore necessary to examine whether Germany is under an obligation to prosecute ex officio the infringement of Article 13(1)(b) of the Basic Regulation which in the present case takes the form of the placing on the market of cheese, under the designation 'Parmesan', which does not comply with the specification for the protected designation of origin ('PDO') 'Parmigiano Reggiano'.

VI – Is Germany under an obligation to prosecute ex officio the infringement of Article 13(1)(b) of the Basic Regulation?

A – Submissions

1. Commission

70. The Commission claims that Germany has not complied with the obligations imposed by Article 13(1)(b) of the Basic Regulation by formally refusing to prosecute, on its territory, the use of the designation 'Parmesan'. It argues, in particular, that infringements of Article 13 of the Basic Regulation must be dealt with by ex officio measures and not merely by private actions brought before the national courts.

71. Member States must intervene ex officio in order to ensure that all the objectives of the Basic Regulation, namely, the protection of the interests of the producers of products covered by a PDO, the promotion of the economic development of the rural areas of production and consumer protection, are achieved. Ex officio measures are necessary in order to ensure that products which are not in compliance with the requirements of the Basic Regulation are not placed on the market. For these purposes Member States must also take appropriate administrative measures and provide for adequate criminal penalties.

72. The possibility of bringing private actions through the courts is inadequate as they merely seek to protect private economic interests, thereby placing the other objectives of the Basic Regulation at risk.

73. Germany's argument that there have not been any judicial proceedings against the marketing of cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' before German courts is irrelevant because, in order to enforce the Basic Regulation effectively, Member States should, in any event, have prosecuted ex officio the unlawful marketing of products called 'Parmesan' which do not fulfil the specification for the PDO 'Parmigiano Reggiano' without the need for a complaint or a judicial action brought by a private party or an association for consumer protection.

74. The obligation to intervene through the use of ex officio measures arises clearly from the terms of Article 10 of the Basic Regulation, which requires the Member States to put in place inspection structures to verify that PDOs are not misused. Moreover, in a number of Member States the functions of these structures include the monitoring of compliance with Article 13 of the Basic Regulation. The obligation to provide for administrative and criminal penalties confirms the obligation to act ex officio.

75. By not doing so, Germany has failed to fulfil its obligations under Article 13(1)(b) of the Basic Regulation in the same way that France failed to fulfil its obligations by its failure to act in the circumstances which gave rise to the judgment in Commission v France. (20)

2. Germany

76. Germany submits that Article 13 of the Basic Regulation, which lays down the scope of protection of the registered geographical indications and designations of origin, is directly applicable and confers rights on right-holders or legitimate users which the national courts must protect. In this regard actions may be brought under trademark law, foodstuffs law and unfair competition law for breach of the PDO.

77. In the present case it is thus for the German courts to examine whether the use of the designation 'Parmesan' on the labels of products does not comply with the mandatory specification for the designation 'Parmigiano Reggiano' and thereby breaches the terms of the Basic Regulation.

78. By establishing such private enforcement, Germany has taken all necessary measures to guarantee the full effect of Article 13(1) of the Basic Regulation. The prosecution ex officio by public authorities of such breaches is not required in order to ensure the application of Article 13(1)(b) of the Basic Regulation.

79. The obligation of Member States to provide for inspection structures pursuant to Article 10 of the Basic Regulation does not require ad hoc monitoring of possible infringements of Article 13 by economic operators on German territory. Although the terms of Article 10(4) of the Basic Regulation are not entirely clear, it appears from the comparison of its different language versions that, given the Italian origin of the protected designation 'Parmigiano Reggiano', it is up to the 'Consorzio del Formaggio Parmigiano Reggiano' and not to the German inspection institutions to ensure compliance with the mandatory specification when the designation is used.

80. The system of judicial remedies established under German law is sufficient to ensure the effective fulfilment of the objectives of the Basic Regulation in Germany. Moreover, the possibility of seeking relief before national courts against any conduct that would be contrary to the protection granted in respect of a registered designation of origin is not reserved to the legitimate user of that designation but is open to competitors, business associations and consumer organisations. The wide range of persons who have standing before the courts demonstrates that the measures which exist in Germany to ensure the enforcement of the Basic Regulation establish a general and efficient system to prevent and impose penalties for breaches of Article 13 of the Basic Regulation.

81. While the Basic Regulation may indeed pursue several objectives, namely the protection of economic interests and consumer protection, nothing in it would suggest that the existing German system of protection and enforcement by means of private judicial action is insufficient to ensure the appropriate protection of designations of origin. Indeed the German system of protection is consistent with the manner in which intellectual property is enforced and consumers are protected against unfair competition under Community law.

82. Member States may choose to prosecute infringements of the Basic Regulation by the way of ex officio action by public authorities, but, under the current state of Community law, they are not obliged to do so.

B – Subject-matter of the proceedings and proof of the failure to fulfil an obligation

83. It should be recalled from the outset that, according to the settled case-law of the Court, in an action for failure to fulfil obligations brought under Article 226 EC it is for the Commission to prove that the obligation has not been fulfilled. It is the Commission's responsibility to place before the Court the information needed to prove the allegation that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption. (21)

84. It is undisputed that the German legal system provides for a range of judicial actions to enforce the protection of designations of origin as laid out in the Basic Regulation. Moreover, a wide range of economic operators may bring such actions before national courts.

85. In the present case, the Commission claims that Germany has 'formally refused to prosecute' on its territory the use of the name 'Parmesan' for the labelling of products which do not conform to the specification for the protected designation of origin 'Parmigiano Reggiano' and thereby infringed its obligations under Article 13(1)(b) of the Basic Regulation. Thus the present infringement proceedings do not question the consistency of a provision of national law with a rule of Community law. Rather the Commission questions the administrative action of the German authorities, which

failed to take action against conduct which allegedly constitutes an infringement of Community law by economic operators on the territory of a Member State.

86. According to the Court's case-law, in a case questioning the application of a national provision by a Member State's administration, proof of a Member State's failure to fulfil its obligations requires production of evidence different from that usually taken into account in an action for failure to fulfil obligations concerning solely the terms of a national provision. In those circumstances, the Court has held that a failure to fulfil obligations can be established only by means of sufficiently documented and detailed proof of the alleged practice of the national administration for which the Member State concerned is answerable. (22)

87. For the purposes of the present case, which does not concern positive action by a Member State's administration but rather a failure to act, the finding of an infringement under Article 226 EC requires, in my view, that the Commission prove that the German administration was under a duty to take ex officio action and has failed to do so.

C – Assessment

88. According to the general principles on which the Community is based and which govern relations between the Community and the Member States, it is for the latter to ensure that Community rules are implemented within their territories. (23) As the Court has consistently held, for the implementation of Community regulations, unless Community law, including its general principles, contains common rules for that purpose, the national authorities act in accordance with the procedural and substantive rules of their own national law. (24)

89. The Basic Regulation contains some common rules on its implementation. Article 10 of the Basic Regulation expressly deals with the monitoring of compliance by producers with the specifications for PDOs.

90. Article 10(4) provides that steps must be taken to ensure that the Regulation is complied with when a foodstuff bearing a PDO does not comply with the specification for that PDO. The wording of Article 10(4) of the Basic Regulation is, however, unclear as to which Member State's inspection authorities are under the obligation to act against the non-compliance with the specification for a given PDO. It appears from the German version of the Regulation (25) that the inspection authority obliged to take the necessary measures is that of the Member State in which the infringing product originates. Other language versions of that same provision do not support such an interpretation and provide that the inspection authority obliged to intervene is not the inspection authority of the Member State where the product originates, but rather the inspection authority of the Member State where the protected designation originates. (26) According to those language versions, only the Italian authorities would be obliged to take action against products which do not comply with the specification for the PDO 'Parmigiano Reggiano'.

91. It is also worth citing Article 10(7) of the Basic Regulation, which provides that 'the costs of inspections provided for under that regulation shall be borne by the producers using that protected name'. This also suggests that the inspection provided for under Article 10 refers exclusively to the enforcement of the specifications with regard to the producers using the protected name in the Member State where it originates.

92. Although it follows from the above that the wording of Article 10 of the Basic Regulation is not entirely clear, I consider that the purpose and general scheme of the Basic Regulation indicate that the obligation to carry out inspections go beyond the mere verification of the compliance of products with the specification for a PDO in the Member State where the PDO originates.

93. It follows from the system of protection set up by the Basic Regulation that for the proper implementation of the Basic Regulation, two kinds of inspections may be required. On the one hand there must be systematic monitoring of compliance, by producers in the area of production of the products bearing the PDO, with the specification for that PDO. On the other hand misuse of PDOs outside the area of production must be acted upon. However, the question arises of the kinds of measures required for that latter purpose.

94. The German legal system provides for the enforcement of PDOs through judicial action which is open to a wide range of plaintiffs who can include inter alia consumer protection associations and business organisations. Enforcement through judicial action is therefore potentially open to plaintiffs pursuing much wider interests than merely the protection of the interests of the producers of goods covered by a PDO.

95. Nevertheless I consider that for the purposes of effective implementation of the Basic Regulation the existence of such judicial means does not exempt Member States from the obligation to provide at the same time for appropriate inspection mechanisms, independently of judicial action. Article 10(1) establishes an obligation for Member States to 'ensure that … inspection structures are in place, the function of which shall be to ensure that agricultural products and foodstuffs bearing a protected name meet requirements laid down in the specifications'. Given such a general formulation the obligation to ensure the effective implementation of the Basic Regulation places Member States under a general obligation to provide for adequate inspection structures to verify whether a product which is marketed in a given Member State and which bears a given PDO complies with the specification for that PDO, regardless of the place where the PDO originates. Such inspections may for instance be carried out in the framework of official controls performed to ensure the compliance with other rules of food law. (27)

96. However, in my view it cannot be inferred from the Regulation that these inspection structures must systematically act ex officio in the absence of any impetus, for instance as a result of complaints of producers whose products lawfully bear a PDO or consumers or any other producers.

97. This is confirmed by the Commission in its literature on the matter. In the Commission's 'Guide to Community Regulations' on 'Protection of Geographical Indications, Designations of Origin and Certificates of Specific character for Agricultural Products and Foodstuffs', it is stated that '[t]he enforcement of exclusive rights is organised and carried out by the Member States. Therefore, it is up to the Member States whether the Services designated for such enforcement act on their own initiative (ex officio) or based on complaints of right holders of the PDO/PGI/TSG.' (28)

98. It follows that Member States have, in the implementation of the Basic Regulation, a discretion as to whether to carry out inspections in a given case and then to take measures if they find goods which infringe the PDO.

99. The present case must be distinguished from situations where, because of the interest at stake, the discretion of a Member State to act ex officio is much more limited. For instance, ex officio action by State authorities, involving controls and possible penalties, is required, even when it is not provided for under Community law and without any external impetus, in situations where there is no incentive for individuals or economic operators to complain (29) or where any delay could result in irreversible damage, such as when the precautionary principle requires immediate action to withdraw dangerous foodstuffs or to end behaviour which may cause irreversible damage to the environment. The present case is not, however, comparable to any of these situations.

100. Even in a situation where Member States have in principle a relatively wide discretion as to the measures which they must adopt and effectively apply in order to safeguard the effectiveness of Community law, Member States may be required, under certain circumstances, to take action. In Commission v France, the Court held that, in that case, the French public authorities had exceeded their margin of discretion by not taking action in spite of criminal acts repeated over several years, tolerated by the police, and complaints lodged before the judicial authorities. (30)

101. However, the facts of the present case, as they appear from the file, are different. In particular, the Commission has failed to produce evidence, which is of temporal relevance to the proceedings at hand, (31) of even one complaint or request for legal protection, much less a pattern of failure to act on such complaints or requests, in relation to abuses of the PDO 'Parmigiano Reggiano' occurring on German territory.

102. In that regard, it is worth noting that, in practice, the Commission relies almost solely on Germany's response during the pre-litigation stage of the present proceedings, to the effect that 'Parmesan' is a generic name, to support its claim that Germany has failed to take appropriate steps to prevent the unlawful use of that designation. In my view, the correspondence exchanged between the parties on the generic nature or otherwise of the designation 'Parmesan' during the pre-litigation procedure must be interpreted as a legal defence raised in the course of legal proceedings and cannot in itself be construed as a formal refusal to protect the registered PDO 'Parmigiano Reggiano'.

103. The Commission has therefore failed to submit sufficiently documented and detailed proof that the German authorities were under an obligation to take ex officio action in the present case and that they have failed to do so.

D – Conclusion

104. It follows from the above that I do not consider that Article 13(1)(b) of the Basic Regulation, in the light of Article 10 of that regulation, required Germany to prosecute ex officio the marketing of cheese which does not comply with the specification for the PDO 'Parmigiano Reggiano' under the designation 'Parmesan' on its territory. In particular, the Commission failed to demonstrate that Germany was under an obligation to take such action in the absence of sufficient and appropriate external impetus to do so.

105. Therefore I consider that the Commission's claim should be dismissed.

VII – Costs

106. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to pay the costs if they have been applied for in the successful party's pleadings. However, Germany has not applied in its pleadings for the costs to be borne by the Commission.

VIII – Conclusion

107. I am, therefore, of the opinion that the Court should:

(1) dismiss the action;

(2) order each party to bear its costs.

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1 – Original language: English.

2 – OJ 1992 L 208, p. 1.

3 – Regulation 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).

4 – Joined Cases C-129/97 and C-130/97 [1998] ECR I-3315, paragraph 37.

5 – Case C-66/00 [2002] ECR I-5917.

6 – See, for further explanations, Opinion of Advocate General Ruiz-Jarabo Colomer in Joined Cases C-465/02 and C-466/02 GermanyandDenmark v Commission ('Feta II') [2005] ECR I-9115, points 26 to 28.

7 – Cited in footnote 5, paragraph 20.

8 – Cited in footnote 5.

9 – See, to that effect, Opinion of Advocate General Léger in Bigi, cited in footnote 5, points 45 to 55 (in particular point 53).

10 – This statement of the Court is surprising because, in that case, four Governments submitted written observations, namely the Italian, Greek, German and Austrian Governments. Apparently, Germany and 'to some extent' Austria disagreed on the statement that 'Parmesan' is the correct translation of 'Parmigiano Reggiano'. Two Member States, France and Portugal, only presented oral observations. They seem to have

endorsed the position of Italy and Greece, and thus been included in what the Court considered a majority. (See, to that effect, Opinion of Advocate General Léger in Bigi, cited in footnote 5, point 47).
11 – Bigi, cited in footnote 5, paragraph 20.
12 – Case C-87/97 Consorzio per la tutela del formaggio Gorgonzola [1999] ECR I-1301, paragraph 25.
13 – Consorzio per la tutela del formaggio Gorgonzola, cited in footnote 12, paragraph 26.
14 – Consorzio per la tutela del formaggio Gorgonzola, cited in footnote 12, paragraph 29.
15 – Consorzio per la tutela del formaggio Gorgonzola, cited in footnote 12, paragraph 27.
16 – In this connection it should also be pointed out that if the term 'Parmigiano' and its translation 'Parmesan' constitute an evocation of the PDO 'Parmigiano Reggiano' it is also unnecessary to consider the question of the effect of the registration of compound designations on its constituent elements, since it is clear that if a constituent element of a compound designation is to be regarded as an evocation of the whole PDO within the meaning of Article 13(1)(b), its use to designate goods which do not fulfil the specification for the PDO concerned infringes the protection granted to that PDO under Article 13(1)(b).
17 – Joined Cases C-289/96, C-293/96 and C-299/96 [1999] ECR I-1541, paragraph 88.
18 – Cited in footnote 6.
19 – In Feta II, packaging material used outside Greece and suggesting a connection between the name 'feta' and Greek cultural traditions and civilisation was considered to be evidence of the lack of generic character of the word 'feta'. In that case the area of production of 'feta' covered a very large part of Greek territory. For that reason the Court could assume that the link between the designation 'feta' and Greece was valuable evidence of the connection consumers establish between the name 'feta' and the area of production of the PDO 'feta' which thus rules out a generic character for the name 'feta'. It is however questionable whether such an approach could be followed in the present case, because the area of production of 'Parmigiano Reggiano' only covers a very limited part of Italian territory. For that reason it is doubtful whether it could be inferred from a connection between 'Parmesan' and Italy that consumers expect cheese named 'Parmesan' to originate in the area of production of 'Parmigiano Reggiano' in Emilia-Romagna.
20 – Case C-265/95 [1997] ECR I-6959.
21 – See, inter alia, Case 96/81 Commission v Netherlands [1982] ECR 1791, paragraph 6; Case C-404/00 Commission v Spain [2003] ECR I-6695, paragraph 26; Case C-434/01 Commission v United Kingdom [2003] ECR I-13239, paragraph 21; and Case C-194/01 Commission v Austria [2004] ECR I-4579, paragraph 34.
22 – See, to that effect, Case C-287/03 Commission v Belgium [2005] ECR I-3761, paragraph 28.
23 – See, inter alia, Joined Cases C-480/00, C-481/00, C-482/00, C-484/00, C-489/00, C-490/00, C-491/00, C-497/00, C-498/00 and C-499/00 Azienda Agricola Ettore Ribaldi and Others [2004] ECR I-2943, paragraph 42; Case C-285/93 Dominikanerinnen-Kloster Altenhohenau [1995] ECR I-4069, paragraph 26; and Case C-292/97 Karlsson and Others [2000] ECR I-2737, paragraph 27.
24 – Joined Cases 205/82 to 215/82 Deutsche Milchkontor and Others [1983] ECR 2633, paragraph 17; Case C-298/96 Oelmühle Hamburg and Schmidt Söhne [1998] ECR I-4767, paragraph 24; and Case C-255/00 Grundig Italiana [2002] ECR I-8003, paragraph 33.
25 – 'Stellt eine benannte Kontrollbehörde und/oder eine private Kontrollstelle eines Mitgliedstaats fest, dass ein mit einer geschützten Bezeichnung versehenes Agrarerzeugnis oder Lebensmittel mit Ursprung in ihrem Mitgliedstaat die Anforderungen der Spezifikation nicht erfüllt, so trifft sie die erforderlichen Maßnahmen, um die Einhaltung dieser Verordnung zu gewährleisten.'
26 – The Italian version is unequivocal in this respect: 'Qualora constatino che un prodotto agricolo o alimentare recante una denominazione protetta originaria del suo Stato membro non risponde ai requisiti del disciplinare, le autorità di controllo designate e/o gli organismi privati di uno Stato membro prendono i necessari provvedimenti per assicurare il rispetto del presente regolamento.'
The French is also quite clear: 'Lorsque les services de contrôle désignés et/ou les organismes privés d'un État membre constatent qu'un produit agricole ou une denrée alimentaire portant une dénomination protégée originaire de son État membre ne répond pas aux exigences du cahier des charges, ils prennent les mesures nécessaires pour assurer le respect du présent règlement.'
The English version is more ambiguous: 'If a designated inspection authority and/or private body in a Member State establishes that an agricultural product or a foodstuff bearing a protected name of origin in that Member State does not meet the criteria of the specification, they shall take the steps necessary to ensure that this Regulation is complied with.'
27 – Indeed this approach has now been unequivocally adopted in Article 10 of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12). This regulation entered into force on 31 March 2006 and repealed the Basic Regulation. Under Article 10 it provides for 'official controls' by stating that 'Member States shall designate the competent authority or authorities responsible for controls in respect of the obligations established by this Regulation in conformity with Regulation (EC) No 882/2004 [of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules]'. Article 11 deals separately with the 'verification of compliance with specifications' and provides inter alia that the costs of such verification shall be borne by operators subject to it.

28 – Protection of Geographical Indications, Designations of Origin and Certificates of Specific character for Agricultural Products and Foodstuffs, Guide to Community Regulations, 2nd Edition, August 2004, DG for Agriculture, Food quality policy in the European Union; the text is available in PDF format on the Commission's Internet site (http://ec.europa.eu/agriculture/publi/gi/broch_en.pdf).

29 – See, for example, the obligation of the Member States to recover unduly paid sums of the EAGGF: see, inter alia, Case C-34/89 Italy v Commission [1990] ECR I-3603, and Case C-28/89 Germany v Commission [1991] ECR I-581.

30 – Cited in footnote 20.

31 – The question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion. (See, inter alia, Case C-384/99 Commission v Belgium [2000] ECR I-10633, paragraph 16; Case C-147/00 Commission v France [2001] ECR I-2387, paragraph 26; and Case C-272/01 Commission v Portugal [2004] ECR I-6767, paragraph 29.)