

European Court of Justice, 25 October 2005, Feta II**PROTECTED DESIGNATIONS OF ORIGIN****Feta is not a generic connotation**

- Various factors relating to the consumption of feta in the Member States tend to indicate that the name 'feta' is not generic in nature

The information provided to the Court indicates that the majority of consumers in Greece consider that the name 'feta' carries a geographical and not a generic connotation. In Denmark, by contrast, the majority of consumers believe that the name is generic. The Court does not have any conclusive evidence regarding the other Member States. The evidence adduced to the Court also shows that, in Member States other than Greece, feta is commonly marketed with labels referring to Greek cultural traditions and civilisation. It is legitimate to infer therefrom that consumers in those Member States perceive feta as a cheese associated with the Hellenic Republic, even if in reality it has been produced in another Member State. Those various factors relating to the consumption of feta in the Member States tend to indicate that the name 'feta' is not generic in nature.

- The relevant national legislation tends to indicate that the name 'feta' is not generic

As to the national legislation, it must be borne in mind that, according to the 18th and 31st recitals in the preamble to the contested regulation, the Kingdom of Denmark and the Hellenic Republic were the only Member States at the time which had legislation specifically relating to feta. The Danish legislation does not refer to 'feta' but to 'Danish feta', which would tend to suggest that in Denmark the name 'feta', by itself, has retained a Greek connotation. Furthermore, as the Court noted in paragraph 27 of *Denmark and Others v Commission*, cited above, the name 'feta' was protected by a convention between the Republic of Austria and the Kingdom of Greece, concluded on 20 June 1972 pursuant to the agreement of 5 June 1970 between those two States relating to the protection of indications of provenance, designations of origin and names of agricultural, craft and industrial products. Since then, the use of the name in Austria has been reserved exclusively for Greek products. It follows that, as a whole, the relevant national legislation tends to indicate that the name 'feta' is not generic. As to the Community legislation, it is true that the name 'feta' is used without further specification as to the Member State of origin in the combined customs nomenclature and in the Com-

munity legislation relating to export refunds. However, the latter legislation and the customs nomenclature apply to customs matters and are not intended to regulate industrial property rights. Their provisions are, therefore, not conclusive in this context. As to earlier assessments made by the Commission, it is true that, on 21 June 1985, it responded to written question No 13/85 from an MEP as follows: 'feta describes a type of cheese and is not a designation of origin' (OJ 1985 C 248, p. 13). It should be borne in mind, however, that, at that time, there was not yet Community protection in place for designations of origin and geographical indications, which was established for the first time in the basic regulation. At the date of that response, the name 'feta' was protected in Greece only by traditional custom. It follows from the foregoing that several relevant and important factors indicate that the term has not become generic. In the light of the foregoing, the Court finds that the Commission could lawfully decide, in the contested regulation, that the term 'feta' had not become generic within the meaning of Article 3 of the basic regulation.

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European Court of Justice, 25 October 2005

(V. Skouris, P. Jann, C.W.A. Timmermans, A. Rosas and J. Malenovský, J.P. Puissechet, R. Schintgen, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues, J. Klučka, U. Löhms and E. Levits)

JUDGMENT OF THE COURT (Grand Chamber)

25 October 2005 (*)

(Agriculture – Geographical indications and designations of origin for agricultural products and foodstuffs – The name 'feta' – Regulation (EC) No 1829/2002 – Validity)

In Joined Cases C-465/02 and C-466/02,

APPLICATIONS for annulment pursuant to Article 230 EC, brought on 30 December 2002,

Federal Republic of Germany, represented by W. Plessing, acting as Agent, assisted by M. Loschelder, Rechtsanwalt,

applicant in Case C-465/02,

Kingdom of Denmark, represented by J. Molde and J. Bering Liisberg, acting as Agents, with an address for service in Luxembourg,

applicant in Case C-466/02,

supported by:

French Republic, represented by G. de Bergues and A. Colomb, acting as Agents, with an address for service in Luxembourg,

United Kingdom of Great Britain and Northern Ireland, represented by C. Jackson, acting as Agent, with an address for service in Luxembourg,

interveners,

v

Commission of the European Communities, represented by J. L. Iglesias Buhigues and H. C. Støvlbæk, and A. Metz-Rauch and Grünheid, acting as

Agents, with an address for service in Luxembourg,

defendant,
supported by:
Hellenic Republic, represented by V. Kontolaimos and I.K. Chalkias, acting as Agents, with an address for service in Luxembourg,
intervener,
THE COURT (Grand Chamber),
composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and J. Malenovský, Presidents of Chambers, J.P. Puissochet, R. Schintgen, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur), J. Klučka, U. Löhmus and E. Levits, Judges,
Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: K. Sztranc, Administrator,
having regard to the written procedure and further to the hearing on 15 February 2005,
after hearing the [Opinion of the Advocate General](#) at the sitting on 10 May 2005,
gives the following

Judgment

1 The Federal Republic of Germany and the Kingdom of Denmark have applied for annulment of Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name ‘Feta’ (OJ 2002 L 277, p. 10) (‘the contested regulation’).

Legal framework

2 Article 2(1) to (3) 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) (‘the basic regulation’) 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;

(b) geographical indication: means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

– originating in that region, specific place or country, and

– which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.

3. Certain traditional geographical or non-geographical names designating an agricultural product

or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a) shall also be considered as designations of origin.’

3 Article 3(1) of the same regulation 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.’

4 Articles 5 to 7 of the basic regulation provide for a procedure for registering a name, known as the ‘ordinary procedure’. Article 7 thereof provides for a procedure for objecting to a registration application.

5 Article 6(3) of the same regulation provides:

‘If no statement of objections is notified to the Commission in accordance with Article 7, the name shall be entered in a register kept by the Commission entitled “Register of protected designations of origin and protected geographical indications”, which shall contain the names of the groups and the inspection bodies concerned.’

6 For the adoption of the measures provided for in the basic regulation, Article 15 thereof provides:

‘The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.'

7 Article 17 of the basic regulation establishes a registration procedure, known as the 'simplified procedure', as follows:

'1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.

3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.'

8 Article 1(15) of Council Regulation (EC) No 692/2003 of 8 April 2003 amending Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2003 L 99, p. 1) repealed Article 17, although it continues to apply to names registered or names for which registration was sought under the procedure provided for by Article 17 prior to the entry into force of Regulation No 692/2003, that is, 24 April 2003.

9 By Commission Decision 93/53/EEC of 21 December 1992 setting up a scientific committee for designations of origin, geographical indications and certificates of specific character (OJ 1993 L 13, p. 16), the Commission set up a 'scientific committee' for the purpose of examining, at the Commission's request, the technical problems relating to inter alia the application of the basic regulation.

10 According to Article 3 of that decision, the members of the scientific committee are appointed by the Commission from among highly-qualified experts with competence in the fields referred to in Article 2 thereof. Under Articles 7(1) and 8(1) thereof, the committee is to meet at the request of a representative of the Commission and its proceedings are to relate to matters on which the Commission has requested an opinion.

Facts

11 By letter of 21 January 1994, the Greek Government applied under Article 17(1) of the basic regulation for registration of the word 'feta' as a designation of origin.

12 On 12 June 1996, the Commission adopted 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). Under the first paragraph of Article 1 of that regulation, the name 'feta' in the Annex thereto in Part A,

under the heading 'cheeses' and the country 'Greece', was registered as a protected designation of origin ('PDO').

13 By [judgment of 16 March 1999 in Joined Cases C-289/96, C-293/96 and C-299/96 Denmark and Others v Commission \[1999\] ECR I-1541](#), the Court of Justice annulled Regulation No 1107/96 in so far as it registered the name 'feta' as a protected designation of origin.

14 In paragraph 101 of that judgment, the Court held that, when registering the name 'feta', the Commission had not taken any account whatsoever of the fact that that name had been used for a considerable time in certain Member States other than the Hellenic Republic.

15 In paragraph 102 of the judgment, the Court found that the Commission, in considering the question of whether 'feta' was a generic name, had not taken due account of all the factors which the third indent of Article 3(1) of the basic regulation required it to take into consideration.

16 Following that judgment, on 25 May 1999 the Commission adopted Commission Regulation (EC) No 1070/1999 of 25 May 1999 amending the Annex to Regulation (EC) No 1107/96 (OJ 1999 L 130, p. 18), which deleted the name 'feta' from the Register of protected designations of origin and geographical indications and from the Annex to Regulation No 1107/96.

17 By letter of 15 October 1999, the Commission sent the Member States a questionnaire on the manufacture and consumption of cheeses known as 'feta' and on how well known that name was amongst consumers in each of the States.

18 The information received in response to that questionnaire was presented to the scientific committee, which gave its opinion on 24 April 2001 ('the scientific committee's opinion'). In that opinion, the committee concluded unanimously that the name 'feta' was not generic in nature.

19 On 14 October 2002, the Commission adopted the contested regulation. Under that regulation, the name 'feta' was once again registered as a protected designation of origin.

20 Article 1 of that regulation provides:

'1. The name "Φέτα" (Feta) shall be included in the register of protected designations of origin and geographical indications provided for in Article 6(3) of Regulation (EEC) No 2081/92 as a protected designation of origin (PDO).

2. The name "Φέτα" shall be added to part A of the Annex to Regulation (EC) No 1107/96 under the heading "Cheeses", "Greece".'

21 According to the 20th recital in the preamble to the contested regulation:

'(20) According to the information sent by the Member States, those cheeses actually bearing the name "Feta" on Community territory generally make explicit or implicit reference to Greek territory, culture or tradition, even when produced in Member States other than Greece, by adding text or drawings with a marked

Greek connotation. The link between the name “Feta” and Greece is thus deliberately suggested and sought as part of a sales strategy that capitalises on the reputation of the original product, and this creates a real risk of consumer confusion. Labels for “Feta” cheese not originating in Greece but actually marketed in the Community under that name without making any direct or indirect allusion to Greece are in the minority and the quantities of cheese actually marketed in this way account for a very small proportion of the Community market.’

22 According to the 33rd to 37th recitals in the preamble to that regulation:

‘(33) The Commission has taken note of the advisory opinion of the Scientific Committee. It takes the view that the exhaustive overall analysis of the legal, historical, cultural, political, social, economic, scientific and technical information notified by the Member States or resulting from investigations undertaken or sponsored by the Commission leads to the conclusion that in particular none of the criteria required under Article 3 of Regulation (EEC) No 2081/92 to show that a name is generic have been met, and that consequently the name “Feta” has not become “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”.

(34) Since the term “Feta” has not been established as generic, the Commission has verified, in accordance with Article 17(2) of Regulation (EEC) No 2081/92, that the application by the Greek authorities for the name “Feta” to be registered as a protected designation of origin complies with Articles 2 and 4 thereof.

(35) The name “Feta” is a traditional non-geographical name within the meaning of Article 2(3) of Regulation (EEC) No 2081/92. The terms “region” and “place” mentioned in that provision may be interpreted only from a geomorphological and non-administrative viewpoint, in so far as the natural and human factors inherent in a given product are likely to transcend administrative borders. Under the above Article 2(3), however, the geographical area inherent in a designation may not cover an entire country. In the case of the name “Feta”, it has therefore been noted that the defined geographical area referred to in the second indent of Article 2(2)(a) of Regulation (EEC) No 2081/92 covers only the territory of mainland Greece and the department of Lesbos; all other islands and archipelagos are excluded because the necessary natural and/or human factors do not apply there. Moreover, the administrative definition of the geographical area has been refined and developed, since the product specification submitted by the Greek authorities contains mandatory cumulative requirements: in particular, the area of origin of the raw material has been substantially limited since the milk used to produce “Feta” cheese must come from ewes and goats of local breeds reared traditionally, whose feed must be based on the flora present in the pastures of eligible regions.

(36) The geographical area covered by the administrative definition and meeting the requirements of the product specification is sufficiently uniform to meet the requirements of Articles 2(2)(a) and 4(2)(f) of Regulation (EEC) No 2081/92. Extensive grazing and transhumance, central to the method of keeping the ewes and goats used to provide the raw material for making “Feta” cheese, are the result of an ancestral tradition allowing adaptation to climate changes and their impact on the available vegetation. This has led to the development of small native breeds of sheep and goats which are extremely tough and resistant, fitted for survival in an environment that offers little food in quantitative terms but, in terms of quality, is endowed with an extremely diversified flora, thus giving the finished product its own specific aroma and flavour. The interplay between the above natural factors and the specific human factors, in particular the traditional production method, which requires straining without pressure, has thus given “Feta” cheese its remarkable international reputation.

(37) Since the product specification submitted by the Greek authorities includes all the information required under Article 4 of Regulation (EEC) No 2081/92, and the formal analysis of that specification has not revealed any obvious error of assessment, the name “Feta” should be registered as a protected designation of origin.’

Forms of order sought and the proceedings before the Court

23 In Case C-465/02, the Federal Republic of Germany claims that the Court should:

- annul the contested regulation;
- order the Commission to pay the costs.

24 In Case C-466/02, the Kingdom of Denmark claims that the Court should:

- annul the contested regulation;
- order the Commission to pay the costs.

25 The Commission contends, in each of the cases, that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

26 By orders of the President of the Court of 13 May and 3 June 2003, the French Republic and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the forms of order sought by the applicants, and the Hellenic Republic was granted leave to intervene in support of the forms of order sought by the Commission.

27 By order of the President of the Court of 13 January 2005, Cases C-465/02 and C-466/02 were joined for the purposes of the oral procedure and judgment.

Admissibility

28 The Greek Government submits that the actions of the Federal Republic of Germany and the Kingdom of Denmark were brought after the time-limit. The contested regulation was published on 15 October 2002. Since the actions were lodged only on 30 December 2002, the two-month time-limit provided for in the fifth paragraph of Article 230 EC had been exceeded.

29 That argument cannot be accepted. Pursuant to Article 81(1) of the Rules of Procedure, the time-limit starts to run only at the end of the 14th day following the date of publication of the measure in question. This is supplemented by the extension on account of distance provided for in Article 81(2) of the Rules of Procedure, in this case 10 extra days. In the light of those provisions, the present actions were lodged within the prescribed period.

Substance

The first plea

30 The German Government submits that there has been infringement of the rules of procedure of the committee provided for in Article 15 of the basic regulation ('the regulatory committee') and infringement of Regulation No 1 of the Council of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition, Series I, Chapter 1952-1958, p. 59). The documents which were to be examined at the meeting of the regulatory committee on 20 November 2001 were not notified to the German Government 14 days prior to that meeting; nor were they notified in German.

31 According to the information submitted to the Court, the regulatory committee did not yet have rules of procedure at the time of that meeting. It is therefore appropriate to refer to the standard rules of procedure – Council Decision 1999/468/EC (OJ 2001 C 38, p. 3).

32 According to Article 3(1) and (2) thereof:

'1. The Chairman shall send the invitation to the meeting, the agenda and proposed measures about which the committee's opinion is required and any other working documents to the committee members in accordance with Article 13(2), as a general rule, no later than 14 calendar days before the date of the meeting ...

2. In urgent cases, and where the measures to be adopted must be applied immediately, the Chairman may, at the request of a committee member or on his or her own initiative, shorten the period laid down in the above paragraph to five calendar days before the date of the meeting ...'

33 Article 3 of Regulation No 1 of 15 April 1958 provides:

'Documents which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State.'

34 It is common ground that, by e-mail of 9 November 2001, the Commission sent the German Government an invitation to a meeting of the regulatory committee, to be held on 20 November 2001. The first item on the agenda of that meeting was an exchange of viewpoints on the 'feta' file. The Commission attached to that e-mail two annexes, both drawn up in English and in French. One of those annexes summarised the responses of the Member States to the Commission's questionnaire of 15 October 1999 pertaining to the manufacture, consumption and reputation of feta. The other annex contained a draft opinion on the file from the scientific committee.

35 At the meeting of the regulatory committee on 20 November 2001, the German delegation requested a German-language version of those two annexes. It is common ground that it never received them.

36 Even if the lack of a German-language version of the two annexes in question were not to comply with Article 3 of Regulation No 1 of 15 April 1958, such an irregularity would not lead to annulment of the contested regulation.

37 A procedural irregularity of this nature could entail annulment of the act ultimately adopted only if, were it not for that irregularity, the procedure could have led to a different result (see, to that effect, Joined Cases 209/78 to 215/78 and 218/78 *Van Landewyck and Others v Commission* [1980] ECR 3125, paragraph 47; Case 128/86 *Spain v Commission* [1987] ECR 4171, paragraph 25; and Case C-142/87 *Belgium v Commission* ('Tubemeuse') [1990] ECR I-959, paragraph 48).

38 At the meeting in question, the members of the regulatory committee were only invited in turn to put forward any comments in regard to the 'feta' file and the results of the Commission's questionnaire. The committee examined a draft regulation only subsequently, at its meeting of 16 May 2002. On that occasion, however, the committee did not manage to obtain a qualified majority of the votes enabling adoption of the draft. The Council, in turn, at its meeting of 27 June 2002, did not manage to adopt the draft regulation on the same topic, also due to lack of qualified majority. At each of those meetings, the Federal Republic of Germany voted against the draft tabled. Even if the Federal Republic of Germany had had the German-language version of the two documents in question at the meeting of 20 November 2001, it would not have been able to object more effectively to that draft.

39 As the Council had not adopted a regulation, the Commission adopted the contested regulation itself, pursuant to the fifth subparagraph of Article 15 of the basic regulation. The Commission therefore had the power to adopt, of its own motion, the measures envisaged.

40 In those circumstances, the fact that the invitation to the meeting of the regulatory committee of 20 November 2001 was sent less than 14 days prior to the meeting and that there was no German-language version of the two documents in question at that meeting could not have had any effect on the measure ultimately adopted.

41 Accordingly, the first plea must be rejected.

The second plea

42 The German Government submits that there has been infringement of Article 2(3) of the basic regulation. The word 'feta' comes from Italian and means 'slice'. It entered the Greek language in the seventeenth century. The name 'feta' is used not only in Greece but also in other countries in the Balkans and the Middle East to refer to a cheese in brine. The Commission was wrong to consider, in the recitals in the preamble to the contested regulation, whether 'feta' had become a ge-

neric name. Since the word is, first of all, a non-geographical term, the Commission should have established that it has acquired a geographic meaning and has done so in a way which does not extend to the whole of the territory of a Member State. Next, the sub-region indicated by the Greek Government in its application for registration is artificially created; it is not based on tradition or on generally-accepted views. Moreover, feta does not owe its quality and characteristics essentially or exclusively to a geographical environment; the statements in the 36th recital in the preamble to the contested regulation are not supported by either the Greek Government's application for registration or by the scientific committee's findings. Lastly, there is no correlation between the geographical area of production and the area of preparation, as is shown by the Greek legal provisions and the fact that the Community grants aid for the production of feta in the Aegean Islands.

43 The Danish Government submits that the name 'feta' does not fulfil the conditions required for registration as a traditional non-geographical name pursuant to Article 2(3) of the basic regulation. The Danish Government states that it is first for the applicant State, and then for the Commission, to establish that the conditions for registration of a designation of origin as a traditional non-geographical name are fulfilled. It states that the geographical area indicated for the purposes of registration in the present case, namely mainland Greece and the department of Lesbos, covers almost all Greece and that no objective reason has been put forward to explain in what respect the regions which have been excluded are any different. The Danish Government states that the exclusive link required between feta cheese and the geographical area indicated in the application does not exist, quite simply because feta comes from throughout the Balkans and not just Greece. The designated geographical area displays considerable climatic and morphological differences and there are many different varieties of Greek fetas, all with different tastes. The international reputation of feta cannot be clearly and directly attributed to the designated geographical area, but rather is largely due to the considerable production and exports of other States, including the Kingdom of Denmark, during the second half of the twentieth century.

44 The French government, intervening in support of the German and Danish governments, states that the word 'feta', which means 'slice' in Italian, is not a geographical name. Accordingly, Article 2(3) of the basic regulation is applicable. Since that provision refers to the second indent of Article 2(2)(a) of the same regulation, it follows that the name 'feta' can be registered as a protected designation of origin only if the quality or characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of the product take place in the defined geographical area. Yet, contrary to Article 2(2) of that regulation, the geographical area of production of feta in Greece covers almost the

entire territory of the Hellenic Republic and, moreover, feta is produced outside Greece, inter alia in France, in conditions comparable to those in Greece. In fact, with the aid of Community subsidies, French cheese producers have managed to adapt traditional methods to industrial production and they currently produce between 10 000 and 12 000 tonnes of feta cheese per year. These two findings preclude registration of the name 'feta' as a protected designation of origin for the Hellenic Republic.

45 The United Kingdom Government has also intervened in support of the German and Danish Governments, although without submitting observations.

46 It is common ground in the present proceedings that the term 'feta' is derived from the Italian word 'fetta', meaning 'slice', which entered the Greek language in the seventeenth century. It is also common ground that 'feta' is not the name of a region, place or country within the meaning of Article 2(2)(a) of the basic regulation. Accordingly, the term cannot be registered as a designation of origin pursuant to that provision. At most, it may be registered under Article 2(3) of the basic regulation, which extends the definition of designation of origin, in particular, to certain traditional non-geographical names.

47 It was on that basis that the term 'feta' was registered as a designation of origin by the contested regulation. According to the 35th recital in the preamble thereto, 'the name "Feta" is a traditional non-geographical name within the meaning of Article 2(3) of [the basic regulation]'.

48 In order to be protected under that provision, a traditional non-geographical name must, inter alia, designate an agricultural product or a foodstuff 'originating in a region or a specific place'.

49 Article 2(3) of the basic regulation, moreover, in referring to the second indent of Article 2(2)(a) of the same regulation, requires that the quality or characteristics of the agricultural product or foodstuff be essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and that the production, processing and preparation of that product take place in the defined geographical area.

50 It follows from a combined reading of those two provisions that the place or region referred to in Article 2(3) must be defined as a geographical environment with specific natural and human factors and which is capable of giving an agricultural product or foodstuff its specific characteristics. The area of origin referred to must, therefore, present homogenous natural factors which distinguish it from the areas adjoining it (see, to that effect, Case 12/74 Commission v Germany [1975] ECR 181, paragraph 8).

51 The issue of whether the definition of the region of origin used in the contested regulation complies with the requirements of Article 2(3) of the basic regulation falls to be examined in the light of those various criteria.

52 As the Commission based itself on the Greek legislation governing the matter, it is appropriate to consider Article 1 of Ministerial Order No 313025/1994 of 11 January 1994 recognising the protected designation of origin (PDO) of feta cheese, which provides:

‘1. The name “feta” is recognised as a protected designation of origin (PDO) for white cheese soaked in brine traditionally produced in Greece, more specifically (“syngekrimena”) in the regions mentioned in paragraph 2 of this article, from ewes’ milk or a mixture of ewes’ milk and goats’ milk.

2. The milk used for the manufacture of “feta” must come exclusively from the regions of Macedonia, Thrace, Epirus, Thessaly, Central Greece, Peloponnese and the department (Nomos) of Lesbos.’

53 The geographical area thus defined for the production of feta covers only mainland Greece and the department of Lesbos. It does not include the island of Crete or certain Greek archipelagos, namely the Sporades, the Cyclades, the Dodecanese Islands and the Ionian Islands.

54 These areas which have been excluded from this geographical area cannot be considered as negligible. Thus the area defined by the national legislation for the production of cheese bearing the name ‘feta’ does not cover the entire territory of the Hellenic Republic. It is therefore not necessary to consider whether Article 2(3) of the basic regulation allows the geographical area connected with a name to cover the entire territory of a country.

55 It is nevertheless appropriate to consider whether the area in question was determined in an artificial manner.

56 Article 2(1)(e) of Ministerial Order No 313025 states: ‘the milk used for the manufacture of feta must come from breeds of ewes and goats raised using traditional methods and adapted to the region of manufacture of the feta and the flora of that region must be the basis of their feed’.

57 According to the information submitted to the Court, and particularly to the specifications sent by the Greek Government to the Commission on 21 January 1994 with a view to registering the name ‘feta’ as a designation of origin, the effect of that provision, read together with Article 1 of the same Ministerial Order, is to define the geographical area covered by reference, inter alia, to geomorphology, that is, the mountainous or semi-mountainous nature of the terrain; to the climate, that is, mild winters, hot summers and a great deal of sunshine; and to the botanical characteristics, namely the typical vegetation of the Balkan medium mountain range.

58 Those factors adequately indicate that the area has homogenous natural features which distinguish it from the adjoining areas. The case-file indicates that the areas of Greece which are excluded from the defined area do not display the same natural features as the area in question. It is thus apparent that the area in question in the present case was not determined in an artificial manner.

59 As regards the Community rules on aid for the production of feta in the Aegean Islands, it is true that Article 6(2) of Council Regulation (EEC) No 2019/93 of 19 July 1993 introducing specific measures for the smaller Aegean islands concerning certain agricultural products (OJ 1993 L 184, p. 1), before being amended by Article 1(4) of Council Regulation (EC) No 442/2002 of 18 February 2002 (OJ 2002 L 68, p. 4), provided for aid for ‘the private storage of locally manufactured cheeses: Feta, at least two months old ...’.

60 That provision shows that feta is also produced in the smaller Aegean islands.

61 The Commission, moreover, confirmed in its observations before the Court that feta does in fact come from local production on some of the smaller Aegean islands.

62 It also stated, however, that those islands are part of the department of Lesbos for administrative purposes.

63 That department is part of the geographical area defined by the national legislation as being part of the area where feta is produced.

64 It follows that Article 6(2) of Regulation No 2019/93 is consistent with the definition of the geographical area for the manufacture of feta laid down by the national legislation and included in the application for registration of that name, and that the argument to the contrary put forward by the German Government is unfounded.

65 The applicants submit that the quality and characteristics of feta are not essentially or exclusively due to a particular geographical environment, as required by the second indent of Article 2(2)(a) of the basic regulation.

66 However, the 36th recital in the preamble to the contested regulation refers to a series of factors which indicate that the characteristics of feta are essentially or exclusively due to a particular geographical environment. Contrary to the submissions of the German Government, that statement is supported by the specifications submitted by the Greek Government, which list in detail the natural and human factors which give feta its specific characteristics.

67 Those factors include the amount of sunshine, temperature changes, the practice of transhumance, extensive grazing and vegetation.

68 The applicants have not demonstrated that the Commission’s assessment on this point is unfounded.

69 The plea alleging infringement of Article 2(3) of the basic regulation must therefore be dismissed as unfounded.

The third plea

70 The German Government submits that the contested regulation infringes Article 3(1) of the basic regulation. ‘Feta’ is a generic name within the meaning of Article 3(1). The Commission did not take due account of all the factors, such as the manufacture of feta in Member States other than Greece, the consumption of feta outside Greece, consumer perception, national and Community legislation and previous assessments by the Commission. The likelihood of consumer confu-

sion referred to in the 20th recital in the preamble to the contested regulation cannot serve as a basis for the protection of the name 'feta', because the misleading presentation of a product has no bearing on the issue of whether a name is generic or whether it is a designation of origin.

71 The German Government adds that the finding that the name 'feta' has not become generic is not supported by a sufficient statement of reasons for the purposes of Article 253 EC; the reference to the advisory opinion of a committee is inadequate for this purpose.

72 The Danish Government submits that the Commission adopted the contested regulation in violation of Article 3(1) and Article 17(2) of the basic regulation, since the term 'feta' is a generic name. In its view, when a name is generic in nature from the beginning, or has subsequently become so, it remains so permanently and irrevocably. It is for the applicant State, and secondly for the Commission, to prove that a name other than a geographical one is not generic.

73 The Danish Government further submits that feta does not specifically originate from Greece, either as a name or as a product. The traditional area of consumption and production is spread over several Balkan countries. The Hellenic Republic itself has imported, produced, consumed and exported cheese under the name 'feta', including feta produced using cow's milk. It is probable that Greek consumers, after a number of years, also consider it to be a generic name. Likewise, in other States where feta is consumed and produced in large quantities, whether within the Community or not, consumers consider feta to be a generic name. Outside its area of origin, feta has been lawfully produced and marketed in many Member States and non-member countries.

74 The Danish Government also submits that Danish production and marketing of feta is in no way contrary to long-standing practices and traditions and does not give rise to any real likelihood of confusion because, since as early as 1963, the Danish legislation has required the name 'Danish feta' to be on the product. The fact that feta is a generic name is evident from a series of provisions and measures emanating from the Community legislature, which includes the Commission.

The generic nature of the name

75 It must be recalled that the third subparagraph of Article 3(1) of the basic regulation provides:

'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.'

76 As to the argument put forward by the Danish Government to the effect that the term 'feta' refers to a type of cheese originating from the Balkans, it is common ground that white cheeses soaked in brine have been produced for a long time, not only in Greece but in various countries in the Balkans and the southeast of

the Mediterranean basin. However, as noted in point B(a) of the scientific committee's opinion, those cheeses are known in those countries under other names than 'feta'.

77 As regards the production situation in the Hellenic Republic itself, the Danish Government submits, without being contradicted on this point, that, until 1988, cheese produced from cow's milk according to methods other than the traditional Greek methods was imported into Greece under the name 'feta' and that, until 1987, feta cheese was produced in Greece using non-traditional methods, in particular from cow's milk.

78 It must be recognised that, if such operations were to persist, they would tend to confer a generic nature on the name 'feta'. The Court nevertheless notes that, by Ministerial Order No 2109/88 of 5 December 1988 approving the replacement of Article 83 'Cheese products' in the Food Code, the definition of the geographical area of production based on traditional practices was established. In 1994, Ministerial Order No 313025 codified all of the rules applicable to feta cheese. Furthermore, all of that legislation created a new situation in which such operations should no longer take place.

79 As to the production situation in the other Member States, the Court notes that it held in paragraph 99 of the judgment in *Denmark and Others v Commission*, cited above, that the fact that a product has been lawfully marketed under a name in some Member States may constitute a factor which must be taken into account in the assessment of whether that name has become generic within the meaning of Article 3(1) of the basic regulation.

80 The Commission acknowledges, moreover, that feta is produced in Member States other than the Hellenic Republic, namely the Kingdom of Denmark, the Federal Republic of Germany and the French Republic. According to the 13th to the 17th recitals in the preamble to the contested regulation, the Hellenic Republic produces approximately 115 000 tonnes annually. In 1998, almost 27 640 tonnes were produced in Denmark. From 1988 to 1998, production in France varied between 7 960 tonnes and 19 964 tonnes. Production in Germany has varied between 19 757 and 39 201 tonnes since 1985.

81 According to those same recitals, the production of feta commenced in 1972 in Germany, in 1931 in France and in the 1930s in Denmark.

82 Moreover, it is common ground that the cheese thus produced could be lawfully marketed, even in Greece, at least until 1988.

83 Although the production in the other countries has been relatively large and of substantial duration, the Court notes, as pointed out by the scientific committee in the first indent of the conclusion in its opinion, that the production of feta has remained concentrated in Greece.

84 The fact that the product has been lawfully produced in Member States other than the Hellenic Republic is only one factor of several which must be

taken into account pursuant to Article 3(1) of the basic regulation.

85 As regards the consumption of feta in the various Member States, as opposed to its production, the Court notes that the 19th recital in the preamble to the contested regulation indicates that more than 85% of Community consumption of feta, per capita and per year, takes place in Greece. As noted by the scientific committee, the consumption of feta is therefore concentrated in Greece.

86 The information provided to the Court indicates that the majority of consumers in Greece consider that the name 'feta' carries a geographical and not a generic connotation. In Denmark, by contrast, the majority of consumers believe that the name is generic. The Court does not have any conclusive evidence regarding the other Member States.

87 The evidence adduced to the Court also shows that, in Member States other than Greece, feta is commonly marketed with labels referring to Greek cultural traditions and civilisation. It is legitimate to infer therefrom that consumers in those Member States perceive feta as a cheese associated with the Hellenic Republic, even if in reality it has been produced in another Member State.

88 Those various factors relating to the consumption of feta in the Member States tend to indicate that the name 'feta' is not generic in nature.

89 As to the German Government's argument referring to the second sentence of the 20th recital in the preamble to the contested regulation, it follows from paragraph 87 of this judgment that it is not incorrect to state, with respect to consumers in Member States other than the Hellenic Republic, that 'the link between the name "Feta" and Greece is thus deliberately suggested and sought as part of a sales strategy that capitalises on the reputation of the original product, and this creates a real risk of consumer confusion'.

90 The argument put forward by the German Government maintaining the contrary is, therefore, unfounded.

91 As to the national legislation, it must be borne in mind that, according to the 18th and 31st recitals in the preamble to the contested regulation, the Kingdom of Denmark and the Hellenic Republic were the only Member States at the time which had legislation specifically relating to feta.

92 The Danish legislation does not refer to 'feta' but to 'Danish feta', which would tend to suggest that in Denmark the name 'feta', by itself, has retained a Greek connotation.

93 Furthermore, as the Court noted in paragraph 27 of *Denmark and Others v Commission*, cited above, the name 'feta' was protected by a convention between the Republic of Austria and the Kingdom of Greece, concluded on 20 June 1972 pursuant to the agreement of 5 June 1970 between those two States relating to the protection of indications of provenance, designations of origin and names of agricultural, craft and industrial products (BGBl. Nos 378/1972 and 379/1972). Since

then, the use of the name in Austria has been reserved exclusively for Greek products.

94 It follows that, as a whole, the relevant national legislation tends to indicate that the name 'feta' is not generic.

95 As to the Community legislation, it is true that the name 'feta' is used without further specification as to the Member State of origin in the combined customs nomenclature and in the Community legislation relating to export refunds.

96 However, the latter legislation and the customs nomenclature apply to customs matters and are not intended to regulate industrial property rights. Their provisions are, therefore, not conclusive in this context.

97 As to earlier assessments made by the Commission, it is true that, on 21 June 1985, it responded to written question No 13/85 from an MEP as follows: 'feta describes a type of cheese and is not a designation of origin' (OJ 1985 C 248, p. 13).

98 It should be borne in mind, however, that, at that time, there was not yet Community protection in place for designations of origin and geographical indications, which was established for the first time in the basic regulation. At the date of that response, the name 'feta' was protected in Greece only by traditional custom.

99 It follows from the foregoing that several relevant and important factors indicate that the term has not become generic.

100 In the light of the foregoing, the Court finds that the Commission could lawfully decide, in the contested regulation, that the term 'feta' had not become generic within the meaning of Article 3 of the basic regulation.

The statement of reasons

101 Turning lastly to the argument that the statement of reasons in the contested regulation is insufficient for a finding that the name 'feta' is not generic, it is appropriate to consider, first, the scope of the scientific committee's opinion and, second, how much detail was provided in the statement of reasons given.

102 In the 11th to the 21st and in the 33rd recitals in the preamble to the contested regulation, the Commission puts forward its own analysis of the issue of whether the term 'feta' is generic. It is only in the 22nd to the 32nd recitals that the Commission refers to the scientific committee's opinion. It is therefore inaccurate to state that the statement of reasons given in the regulation on the question of whether the term 'feta' is generic in nature consists merely of a repetition of that opinion.

103 Decision 93/53 indicates that the scientific committee was set up by the Commission, who also appointed its members. The committee is to meet at the request of a representative of the Commission and the proceedings of the committee are to relate to matters on which the Commission has requested an opinion.

104 In accordance with those provisions, the Commission was free, as it determined, to refer questions relating to designation of origin to the experts appointed to the committee in order to help elucidate the problem, as it did in the present case. Likewise, it was

for the Commission to decide to what extent it would follow the opinion provided by the committee.

105 It follows from the 33rd recital in the preamble to the contested regulation that, in the present case, the Commission chose to adopt the conclusions reached by the committee. This manner of proceeding is in accordance with the provisions of both Decision 93/53 and Article 253 EC.

106 As to the degree of detail in the statement of reasons provided in the contested regulation on the question of the generic nature of the term 'feta', it is settled case-law that the statement of reasons required by Article 253 EC must be appropriate to the nature of the measure in question and must show clearly and unequivocally the reasoning of the institution which enacted the measure, so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review (see Case C-328/00 Weber [2002] ECR I-1461, paragraph 42 and the case-law cited therein). The institution which adopted the act is not required, however, to define its position on matters which are plainly of secondary importance or to anticipate potential objections (see, to that effect, Case C-361/95 P Commission v Sytraval and Brink's France [1998] ECR I-1719, paragraph 64).

107 The Commission clearly set out, in the 11th to the 33rd recitals in the preamble to the contested regulation, the essential factors which led it to the conclusion that the name 'feta' was not generic within the meaning of Article 3 of the basic regulation. That discussion constitutes a sufficient statement of reasons for the purposes of Article 253 EC.

108 It follows that the argument that the statement of reasons contained in the contested regulation is insufficient for a finding that the name 'feta' is not generic lacks foundation.

109 It follows that the plea alleging infringement of Article 3(1) of the basic regulation and of Article 253 EC must be dismissed as unfounded.

110 In the light of all of the foregoing considerations, the present action must be dismissed.

Costs

111 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 Commission has applied for costs and the Federal Republic of Germany and the Kingdom of Denmark have been unsuccessful in their pleas, they must be ordered to pay the costs. Under the first subparagraph of Article 69(4) of those same Rules of Procedure, the Hellenic Republic, the French Republic and the United Kingdom, as interveners, are to bear their own costs.

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

1. Dismisses the actions;
2. Orders the Federal Republic of Germany to pay the costs in relation to Case C-465/02 and the Kingdom of Denmark to pay the costs in relation to Case C-466/02;

3. Orders the Hellenic Republic, the French Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.

OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 10 May 2005 (1)

Joined Cases C-465/02 and C-466/02

Federal Republic of Germany

and

Kingdom of Denmark

v

Commission of the European Communities

(Agriculture – Geographical indications and designations of origin for agricultural products and foodstuffs – The name 'feta' – Generic names – Traditional names – Validity of Regulation (EC) No 1829/2002)

Introduction

1. In this action for annulment, the Court is once again seized of a dispute concerning the lawfulness of the inclusion of the name 'feta' in the European Community register of geographical indications and designations of origin.

2. The issue previously arose in questions referred for a preliminary ruling, and later withdrawn, by the Simvoulitis Epikratias (Greek Council of State), in which connection I delivered an Opinion on 24 June 1997, (2) and in another action for annulment (3) where the Court ruled that the registration was to be annulled on procedural grounds but did not examine whether the name is generic or whether it may be classed as traditional for the purposes of the applicable legislation.

3. Subsequently, the Commission took a number of steps designed to rectify the shortcomings which had been brought to light in the judgment and reinserted the name 'feta' into the list of protected designations by means of Commission Regulation (EC) No 1829/2002, (4) a measure whose annulment is sought by Germany and Denmark.

4. In this Opinion, I shall analyse the legal framework and the relevant case-law of the Court, before setting out the facts giving rise to the proceedings and examining the pleas for annulment.

II – The legal framework: Community protection of geographical indications and designations of origin

A – Background

5. The first reference to a designation of origin can be found in the Bible where it describes the construction of the temple of Jerusalem, promised to Yahveh by King David. For that purpose, Hiram, King of Tyre and Sidon, cut down cedars from Lebanon at the request of Solomon, whose palace was later built using so many of those cedars that it was known as the House of the Forest of Lebanon because it had four rows of columns made from the prized wood. The same wood was used to panel the throne room, 'where he administered justice, the Hall of Judgment'. (5) In addition to names and symbols, a reference to geographical origin was probably one of the first methods of identifying individuals and objects in order to distinguish them from

their peers. (6) A number of accounts demonstrate that, since antiquity, products originating in certain areas have been associated with standing and prestige. Classical authors, such as Herodotus, Aristotle and Plato, bear witness to the Greeks' appreciation of bronze from Corinth, marble from Phrygia and Paros, pottery from Athens, terracotta statuettes from Thisbe, perfumes from Arabia and wines from Naxos, Rhodes and Corinth. (7) In *The Aeneid*, Virgil tells how Helen gave Aeneas gifts of 'objects made of solid gold and carved ivory, large quantities of silver and copper vessels from Dodona', (8) and includes among the gifts from Andromache to Ascanius 'garments with designs embroidered in gold thread and a Phrygian chlamys'. (9) Horace peppered his work with a whole array of Roman geographical indications and warned against imitations. (10)

6. The link between products and their origin did not distinguish between naturally occurring and man-made objects and did not correspond to a precise definition. Nor was the link covered by any legal provisions. (11)

7. It was the same in the Middle Ages; for example, an extract from Alcius refers to Calcide swords with short blades and long hilts, so-called because of the place they were made. (12) At that time there appears to have been some confusion between craftsmen's marks and marks indicating the place of origin of a product, which came about in response to the obligation of guild members to identify their products or be excluded from the guild. Consequently, two types of marks emerged: the mark of the guild (*signum collegii*) and each craftsman's own mark (*signum privati*). (13) There was therefore a guarantee that certain requirements had been satisfied in the production of the goods, which in turn indirectly safeguarded the place of production.

8. The French Revolution brought about the abolition of guilds and the restoration of full trade freedom, by eradicating most protectionist practices. Not all were eliminated, however, since, in the first half of the 19th century, there still existed rules designed to promote specialities of certain areas, such as soap from Marseille, steel from Westphalia and the Rhineland, and forges from Austria. (14)

9. At that time, a number of countries started to take measures to prevent consumers being misled as to the origin of natural and manufactured products, particularly in the wine sector. (15) An attempt was made to protect the consumer by guaranteeing the authenticity of the product, and to protect the producer against illegal imitations. (16) Subsequently, a system of protection was implemented which was similar to the one for signs identifying goods and under which designations of origin were recognised in their own right.

10. Meanwhile, numerous references to the origin of certain products continued to flourish in European literature and culture, thereby drawing attention to the recognised quality or the specific characteristics of those products. In *Don Quixote*, Cervantes refers to spindles from Guadarrama; (17) to certain foodstuffs,

such as chickpeas from Martos, (18) francolins from Milan, pheasants from Rome, veal from Sorrento, partridges from Morón, and geese from Lavajos; (19) to Neapolitan soap; (20) and to certain types of fabric, such as woollen cloth from Cuenca and limiste from Segovia. (21) Lope de Vega praises a French long cloak (22) and mentions palmilla cloth from Cuenca (23) and plates from Talavera; (24) in *Hamlet*, Shakespeare refers to the 'draughts of Rhenish' with which the king drinks toasts, (25) and the wager between Claudius and Laertes of six Barbary horses against six French rapiers and poniards; (26) Proust praises a desert, stating that it would be worth opening bottles of Port, (27) and describes the meeting in the Hotel Balbec between the narrator and the Duchess of Guermantes, who is shrouded in the mist of a grey crêpe de Chine dress; (28) while Carpentier, who faithfully portrays European culture on the American continent, writes about Bordeaux wine, (29) Italian straw hats, (30) French and Italian dolls, and Scotch 'whisky'. (31)

11. Nowadays, products are distinguished by the fact that they are sold under each producer's own mark; however, products also frequently bear an indication of the place of manufacture. In a world dominated by symbols, where advances in trade offer numerous alternatives to the consumer, the name of a product has emerged as a decisive factor when it comes to making a choice, hence its economic significance.

B – First steps in Community legislation

12. The EC Treaty contains no provisions governing geographical indications. The historical developments I have described above meant that, when the Treaty was adopted, the legal systems of the Member States protected geographical indications in different ways. While some countries provided general safeguards under measures prohibiting unfair competition, in particular by application of the principle of authenticity, others, such as France and Spain, had implemented specific measures similar to the rules laid down for certain distinguishing features but characterised by the fact that they differentiated between 'indications of source' and 'designations of origin'. (32)

13. The existence of those different systems of protection in the European Union is incompatible with the fundamental freedoms, since the exclusive right to use a name affects the free movement of goods. (33) However, the Treaty recognises that effect since, notwithstanding the fact that Articles 28 and 29 EC prohibit quantitative restrictions on imports and exports and measures having equivalent effect, Article 30 EC lays down that those provisions are not to preclude the setting of limits on the grounds of, *inter alia*, 'the protection of industrial and commercial property'. (34) However, the competence of the Member States to set those limits ceases when the Community introduces harmonising measures to guarantee protection. In any event, as I will discuss later, the task of defining the extent to which that right takes precedence over freedom of movement has fallen to the Court.

14. Commission Directive 70/50/EEC of 22 December 1969 on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty (35) provided for the adaptation of the effects of Article 28 EC in this sphere, by referring to measures which confine names which are not indicative of origin or source to domestic products only (Article 2(3)(s)). To put it another way, it follows that measures which fall within either of those categories are not excluded.

15. Subsequently, Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (36) provided that the authorities of each Member State were entitled to prohibit trade in those products on the grounds of the protection of industrial and commercial property rights, indications of source, designations of origin, and the prevention of unfair competition (Article 15(2)).

C – Current Community legislation

16. Initially, Community legislation applied only to the wine sector. Later, the scope of the legislation was extended to the agricultural and food sectors, while in the future it is likely to apply to other sectors, (37) as envisaged in recital 9 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 (38) ('the basic regulation'), which restricts the scope of the regulation to products and foodstuffs 'for which a link between product or foodstuff characteristics and geographical origin exists; ... however, this scope could be enlarged to encompass other products or foodstuffs'. (39)

1. Vine products

17. Wines, musts and grape juices were listed in Annex II to the Treaty among the products for which a common agricultural policy was to be drawn up. That was the basis upon which, at a very early stage, Regulation No 24 of the Council of 4 April 1962 on the progressive establishment of a common organisation of the market in wine (40) laid down certain general principles and provided for rules to be drawn up governing quality wines produced in defined regions.

18. More recently, Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine (41) has become the regulatory pillar of the system of rules in the sector, without prejudice to certain specific rules laid down elsewhere. (42)

19. In view of the fact that 'the description, designation and presentation of products covered by this Regulation can have significant effects on their marketability', Regulation No 1493/1999 partly deals with the need to 'provide for the obligatory use of certain terms so as to identify the product and provide consumers with certain important items of information and the optional use of other information on the basis of Community rules or subject to rules concerning the prevention of fraudulent practices' (recital 50). In ac-

cordance with Article 47(1), the objectives of the regulation include the protection of the legitimate interests of consumers (point (a)) and producers (point (b)), the smooth operation of the internal market (point (c)), and the promotion of the production of quality products (point (d)).

20. Furthermore, the system of rules laid down may be supplemented by specific laws adopted by the Member States.

2. Agricultural products and foodstuffs

21. It was not until the beginning of the 1990s that the Community adopted legislation regulating the use of geographical indications for other types of product, in particular agricultural products and foodstuffs. The reason was that, although at the outset Directive 79/112 on labelling appeared to be an adequate and appropriate measure to protect the consumer against the risk of fraud, (43) it subsequently became clear that that was not the case since there were other interests at stake. Directive 79/112 was a useful addition but it did not protect geographical indications or safeguard the consumer effectively. (44)

22. The need to prevent new obstacles to trade and to regulate instruments in order to protect consumers and producers adequately was part of the reason for the creation of a Community policy on quality, (45) aimed at closing the gaps which had been identified and highlighted by the Court. (46)

23. During the debate which followed, a number of suggestions were made including, inter alia, that wide protection should be ensured for terms identifying the places of origin of foodstuffs. (47) The Commission took action in that connection (48) and steps were also taken by the European Parliament. (49)

24. Accordingly, on 14 July 1992, approving the proposal submitted in February 1991, the Council adopted the basic regulation, (50) which lays down essential rules in the field. In contrast to the wine sector, the system was created around the traditional concept of a designation of origin and is supported by compulsory registration, in so far as protection is granted only following entry in a register. (51)

D – The basic regulation

25. The recitals refer to a number of objectives on which the regulation is founded, namely, the diversification of agricultural production, the promotion of products having certain characteristics, and the provision to consumers of clear, reliable information about the origin of their purchases. After acknowledging the successful results achieved by States whose legal systems already protected designations of origin (recital 6) and the diversity existing in the field, the regulation states that 'a framework of Community rules on protection will permit the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers' eyes' (recital 7).

26. The scope of the protection available is wide, in that, in accordance with Article 13, a registered name precludes: (a) any direct or indirect commercial use in respect of products not covered by the registration; (b) any misuse, imitation or evocation, even if the true origin of the product is indicated; (c) any other false indication as to the provenance, origin, nature or essential qualities of the product; and (d) any other practice liable to mislead the public as to the true origin of the product.

27. In short, as I pointed out in the Opinion in *Canada Cheese Trading and Kouri*, '[t]he legal protection of a geographical name confers a collective monopoly over its commercial use upon a particular group of producers by reference to their geographical location – in contrast, a trade mark can only be used by the owner'. (52) Such protection entails a reward for the effort invested by the multiple holder of the registered name, who, by manufacturing the product concerned in a particular manner, ensures that the product acquires a reputation worthy of protection under that form of industrial property right. The protection ensures that the holders of the designation do not suffer financial loss and also precludes unjust enrichment on the part of other individuals.

28. However, the progress achieved at international level and the desire to provide a solution similar to the guidelines laid down in national legal systems means that the protection is not confined to traditional designations of origin but that it also extends, albeit to a lesser degree, to geographical indications, two concepts which, in the light of the actions for annulment before the Court, require to be examined in some detail. It is also necessary to deal with unregistrable names and with the registration procedure.

1. The concepts of designation of origin and geographical indication

29. Article 2 of the basic regulation describes what is meant by each term for the purposes of that regulation. Paragraph 2 contains a basic definition which is then expanded in paragraphs 3 and 4.

a) Basic definition

30. In accordance with Article 2(2) of the basic regulation:

(a) 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'. (53)

(b) Geographical indication denotes the 'name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

– originating in that region, specific place or country, and

– which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area'.

31. Thus, protection does not extend to all names but only to ones which encompass a dual connection, both spatial and qualitative, between the product, on the one hand, and its appellation, on the other. The qualitative connection also serves to differentiate designations of origin from geographical indications, in that the link with a particular area is not as strong in the latter case. (54)

i) The geographical link

32. Both forms of protection require a direct connection with a place. That aspect of the relationship has no minimum delimitation because the reference to a 'specific place' includes the smallest section of that place, such as part of a valley, the side of a mountain, or the bank of a river.

33. However, there is a maximum limit reflected in the word 'country', a territorial unit which is protected only in 'exceptional cases'. In principle, it could be argued that the term denotes States which are small in area. (55) However, if that were the case, the basic regulation would have stated as much, (56) and it would therefore have been possible to protect names covering a wide area, including ones encompassing an entire country, (57) provided that they met the required conditions.

34. Nevertheless, it must be pointed out that a designation of origin is capable of covering an entire country on the grounds that certain national and international provisions do not set any limits at all. (58) However, a number of Community provisions, such as the ones already cited in relation to the wine sector, provide that such a wide definition is exceptional in nature. (59)

35. Unquestionably, a name which encompasses an entire Member State could be classed as protectionist, in so far as the products associated with the name would benefit from the mere fact of its production there. However, the aim of the basic regulation in describing such cases as 'exceptional' reflects how infrequently the characteristics of a product have a connection with the natural and human features of a whole country; (60) such a connection is more likely to arise in smaller countries, although that does not preclude its occurrence in other contexts. In that regard, it is appropriate to include, for example, the registration of 'Svecia' (61) or that of 'Salamini italiani alla cacciatora'. (62)

ii) The qualitative link

36. This requirement is designed to ensure that the product possesses a certain quality or attributes which distinguish it from other products of the same type and are due to the particular conditions of the area of origin, such as the climate or the vegetation.

37. However, the specific character of a product is generally derived from more than one factor, and is sometimes a combination of several. The provision re-

fers to ‘natural and human’ factors. (63) Although the use of the conjunction ‘and’ indicates that both factors are required, there is nothing to preclude one factor from usually taking precedence, to the extent that, in most instances, where the particular features of a product are the result of natural circumstances they are protected by a designation of origin, and, where those features are derived essentially from human activity, they are protected by a geographical indication. (64)

b) Equivalent concepts

38. Article 2(3) and (4) of the basic regulation extends the definition of designation of origin to include traditional names and other names with geographical connotations.

i) Traditional names

39. Normally, geographical designations include the name of a city, town, area, or region of reasonable size. However, in trade, other appellations exist that are wider in scope and do not evoke a geographical origin directly and unequivocally, alluding to it indirectly instead. That is the case with traditional names which, while they do not refer to a place directly, are capable of indicating the origin of a product by triggering a process of association with a particular location in the minds of consumers. (65)

40. In accordance with Article 2(3) of the basic regulation, certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a), are also considered as designations of origin. (66)

41. In such names, which are also permitted in other spheres such as the wine sector, (67) the geographical connection disappears, although the relationship with a specific area, from which certain particular characteristics are derived, is retained as an essential feature. Such cases are unusual (the provision refers to ‘certain’ names) and satisfy the basic elements of the definition into which they are absorbed.

42. Unlike in other spheres, where protection is conferred only on appellations that are specifically mentioned, in this case general protection is afforded to agricultural products and foodstuffs originating in ‘a region or a specific place’, provided that their quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and that their production, processing and preparation take place in the defined geographical area.

ii) Other geographical designations

43. Article 2(4) extends the protection where the raw materials of the products concerned come from a geographical area larger than or different from the processing area, provided that the production area of the raw materials is limited, that special conditions for the production of the raw materials exist, and that there are inspection arrangements to ensure that those conditions are adhered to.

44. That case includes situations where a product is identified by a designation of origin but does not actually originate in the place referred to. (68)

2. Unregistrable names

45. Article 3 contains a negative delimitation, in that it precludes the registration of certain names, such as generic names and names which are likely to mislead as to the true origin of the product.

a) Generic names

46. Article 3(1) reflects a traditional prohibition, applied by national administrative authorities and recognised by the Court, (69) which precludes the registration of ‘[n]ames that have become generic’. That provision is supplemented by Article 17(2) which also excludes ‘generic names’, even where such names are protected in the Member States or have been established by usage in Member States where there is no protection system.

47. The prohibition is justified on the ground that such names no longer perform their basic function, in that they have lost the link with the area where they originated and have ceased to identify the product itself as coming from a particular place, with the result that they have become descriptive of a type or kind of product. (70)

48. In view of the difficulties that can result from a prohibition, the basic regulation lays down guidelines for defining the term. First, the regulation provides that ‘[f]or 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’. Second, the regulation goes on to state that, ‘[t]o 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’.

49. The guidelines do not stop there, since Article 3 also requires the Council, before the entry into force of the basic regulation, to draw up and publish a non-exhaustive, indicative list of the names of agricultural products or foodstuffs which are within the scope of the basic regulation and are regarded under the terms of Article 3(1) as being generic and thus not able to be registered. However, at the time of delivery of this Opinion, that requirement had not been complied with.

b) Names which are likely to mislead

50. Article 3(2) provides that a name may not be registered where it conflicts with the name of ‘a plant variety or an animal breed and as a result is likely to mislead the public as to the true origin of the product’.

3. The registration procedure

51. As with other industrial property rights, the protection of a name identifying an agricultural product or a foodstuff is conditional upon registration, a compulsory procedure that fulfils objectives similar to those of

the Community trade mark, (71) but is unlike the procedure in the wine sector.

52. It is clear from Article 17(3) that, since it is the sole system of protection for such names in the Community, the requirement of registration must be met even in respect of names which, before the entry into force of the basic regulation, were already protected under national laws or were established by usage in Member States with a different system. Registration may be carried out in accordance with an ordinary procedure or a simplified procedure.

a) The ordinary procedure

53. This procedure consists of two successive phases, the first of which takes place before the national government concerned and the second before the Commission. The second phase consists of verification, any objections, and the decision concerning registration.

54. For the purposes of the present actions for annulment, it is merely necessary to point out that Article 15 of the basic regulation (72) provides for the establishment of a committee ('the Regulatory Committee'), to which proposals are submitted for an opinion. Two possibilities then arise: if the committee approves it, the proposal is adopted; if there is no approval from the committee, the proposal is submitted forthwith to the Council. The latter option also arises where the committee fails to deliver an opinion, owing, on many occasions, to insufficient votes. If, for any reason, the Council fails to deliver an opinion within three months, 'the proposed measures shall be adopted by the Commission'.

b) The simplified procedure

55. In addition to the steps described above, Article 17 (which was deleted by Regulation No 692/2003) laid down a simpler procedure to prevent names which were already protected under the legal systems of the Member States from being subject to the same requirements and time-limits as new names.

56. Article 17 set out the following steps: (a) within six months of the entry into force of the regulation, the Member States were required to inform the Commission which of their legally protected names or, in those Member States without a protection system, which of their names established by usage, they wished to register; and (b) in accordance with the procedure in Article 15, the Commission was to register the names which complied with Articles 2 and 4. Article 7 did not apply and the registration of generic names was prohibited. (73)

c) The Scientific Committee

57. Irrespective of which procedure is used, it frequently involves the examination of very technical issues. In order to assist it with such questions, the Commission, by Decision 93/53/EEC of 21 December 1992, (74) set up a scientific committee composed of highly qualified professionals, whose task is to examine the factors to be taken into account when defining indications, designations and exceptions thereto, to examine whether such indications and designations are generic, and to carry out an assessment of the tradition-

al nature of the product concerned and of criteria regarding the risk of misleading consumers in cases of conflict.

E – Regulation No 1107/96

58. Following the notification procedure provided for in Article 17 of the basic regulation, on 12 June 1996 the Commission adopted Regulation (EC) No 1107/96, (75) for the purpose of publishing registrations effected at Community level. Article 1 provides that '[t]he names listed in the Annex shall be registered as protected geographical indications (PGI) or protected designations of origin (PDO)'.

59. The Annex has been amended and supplemented many times, usually to include other names. (76) It is the challenge against the inclusion of one such name which has given rise to the present proceedings.

III – Analysis of the case-law of the Court

60. An analysis of the case-law of the Court is particularly important in order to understand more clearly the concepts to be considered, the purpose of the protection conferred and the meaning of the basic regulation.

A – Classification as industrial and commercial property rights

61. In *Dassonville*, (77) the Court dealt with indications of origin for the first time, albeit as a secondary issue in a reference for a preliminary ruling on the interpretation of the former Articles 30, 31, 32, 33, 36 and 85 of the EEC Treaty, with regard to the requirement in Belgium of an official document issued by the government of the exporting country for products bearing a designation of origin. In addition to defining a measure having equivalent effect (paragraph 5), the Court held that, in the absence of a Community system guaranteeing for consumers the authenticity of a product's designation of origin, Member States are empowered to adopt reasonable, non-discriminatory, non-restrictive measures to prevent unfair practices (paragraphs 6 and 7).

62. In *Sekt-Weinbrand*, the Court considered the issue more directly from the point of view of the free movement of goods. In that case, the Commission claimed that Germany was in breach of that freedom by reserving the names 'Sekt' and 'Weinbrand' to domestic wines and brandies and the name 'Prädikatskt' to Sekt produced in Germany from a minimum proportion of German grapes. The Court took the same view, holding that, although the Treaty does not restrict the power of each Member State to legislate in that regard, it prohibits the introduction of new measures of an arbitrary and unjustified nature whose effects are equivalent to quantitative restrictions, which is precisely the case where the protection provided for indications of origin is granted to other appellations which are not indications of origin, such as names which, at the time, are merely generic in nature.

63. The Court held that the restriction of freedom of movement was justified by the need to protect designations of origin to the extent to which the latter safeguard the interests of producers against unfair competition and the interests of consumers against in-

formation which may mislead them (point 7). In *Cassis de Dijon*, (78) the Court referred again to the 'fairness of commercial transactions' and the 'defence of the consumer' as justification for the restriction.

64. However, those grounds are not included in the list in Article 30 EC, which cannot be 'extended to cases other than those specifically laid down', (79) and must be construed restrictively. (80) As a result, uncertainty arose as to whether Article 30 EC applies to appellations indicating the origin of a product.

65. The majority of academic writers argued that indications of origin should be included in the concept of industrial and commercial property, which is referred to in Article 30 EC. (81) In support of that assertion, those writers cited the Paris Convention for the Protection of Industrial Property of 20 March 1883, (82) Article 1(2) of which refers to 'indications of source or appellations of origin' in conjunction with patents and trade marks.

66. In *Delhaize et Le Lion*, (83) the Court accepted that argument when analysing whether it was permissible to bottle wine away from the place of production, holding that refusal to authorise that practice amounted to a prohibited measure and that such measures are not justified 'on grounds of the protection of industrial and commercial property within the meaning of Article 36 of the EC Treaty [now, after amendment, Article 30 EC] unless they are needed in order to ensure that the registered designation of origin fulfils its specific function' (paragraph 16). That approach was followed in *Exportur*(84) and *Belgium v Spain*. (85) In the latter, the Court declared that '[d]esignations of origin fall within the scope of industrial and commercial property rights. The applicable rules protect those entitled to use them against improper use of those designations by third parties seeking to profit from the reputation which they have acquired. They are intended to guarantee that the product bearing them comes from a specified geographical area and displays certain particular characteristics' (paragraph 54). The Court took the same view in *Ravil*(86) and *Consorzio del Prosciutto di Parma and Salumificio S. Rita*. (87)

B – Aim of the protection

67. The *Sekt-Weinbrand* judgment drew attention to the fact that the role of designations of origin and geographical indications is to describe and to ensure that the product referred to 'does in fact possess qualities and characteristics which are due to the fact that it originated in a specific geographical area' (paragraph 7). That approach took into account the requirement of a dual connection, both spatial and qualitative, (88) enshrined in the basic regulation, which was also held necessary in *Delhaize et Le Lion*.

68. In *Belgium v Spain*, the Court stressed the importance of the reputation of designations of origin among consumers, a fact which may be used by producers to attract custom. The Court declared that '[t]he reputation of designations of origin depends on their image in the minds of consumers. That image in turn depends essentially on particular characteristics and more generally on the quality of the product. It is on the

latter, ultimately, that the product's reputation is based' (paragraph 56).

69. The inclusion of designations of origin and geographical indications within the scope of industrial and commercial property rights adds a new dimension to the assets of the holders of such rights, founded on the express or implied reputation of their products, (89) thereby protecting them against infringement by those who seek to use a right which does not have legal protection. In other words, it involves conferring a monopoly of usage. As the Court declared in *Keurkoop*, (90) the aim of the protection of such rights under Article 30 EC is 'to define exclusive rights which are characteristic of that property' (paragraph 14).

70. However, it is made clear in *Warsteiner Brauerei*(91) and, more explicitly, in *CMA*, that the safeguarding of so-called simple indications of source is not based on the protection of industrial and commercial property, but rather, where applicable, of the protection of consumers. Paragraph 26 of the judgment in *CMA* dismisses the argument that 'the contested scheme is justified by Article 36 of the EC Treaty, as coming within the derogation for the protection of industrial and commercial property in so far as the *CMA* label constitutes simply a geographical indication of provenance'.

C – The basic regulation

71. The Court has analysed the basic regulation on a number of occasions. A systematic analysis of the case-law, with a view to obtaining an overall impression, reveals that the Court has ruled on the scope of the regulation, the extent of the Community protection, and registration and its effects.

1. Scope

72. In *Italy v Commission*, (92) an action contesting a regulation concerning marketing standards for olive oil, (93) the Court pointed out that the criteria laid down by the basic regulation 'refer to specified homogeneous geographical areas and cannot be converted into general rules applicable irrespective of the size and heterogeneity of the areas concerned', and that there is no 'general principle that the origin of different agricultural products should be defined in uniform and mandatory terms by reference to the geographical area in which they were grown' (paragraph 24).

73. Moreover, in accordance with *Budějovický Budvar*, (94) application of the basic regulation 'depends essentially on the nature of the designation, in that it covers only designations of products for which there is a specific link between their characteristics and their geographic origin, and by the fact that the protection conferred extends to the Community'.

74. More specifically, *Pistre and Others*, a case which arose as a result of a reference for a preliminary ruling from the *Cour de cassation*, France, concerning the use of the description 'montagne' in respect of agricultural products and foodstuffs, made clear the need for a link between the quality and the characteristics of the products concerned, on the one hand, and the physical surroundings, on the other. That link does not arise in the word 'montagne' which, moreover, suggests to

the consumer qualities with an abstract connection to mountain areas, rather than to a place, a region or a country.

75. In any event, it follows from *Pistre and Others* that, outside the scope of the basic regulation, Member States retain the power to govern on their territory the use of geographical indications. In *Warsteiner Brauerei*, the Court upheld the use of that criterion in relation to simple indications, declaring that Community law 'does not preclude the application of national legislation which prohibits the potentially misleading use of a geographical indication of source in the case of which there is no link between the characteristics of the product and its geographical provenance' (paragraph 54). In *Budějovický Budvar*, the Court once again advocated that approach.

2. Extent of the protection

76. In *Consorzio per la tutela del formaggio Gorgonzola*, (95) the Court held first of all that, in the present state of Community law, the principle of the free movement of goods does not preclude Member States from taking measures to protect registered designations of origin. The Court went on to state that protection under the basic regulation extends to any evocation (Article 13(1)(b)), even where the true origin is stated, which includes cases where the term used incorporates part of the protected designation, the fact that there is a likelihood of confusion not being the most important factor (paragraphs 25 and 26).

77. It is usual for there to be a number of stages between manufacture and marketing, and accordingly, in *Ravil and Consorzio del Prosciutto di Parma and Salumificio S. Rita*, the Court ruled on the question whether the grating and packaging of cheese, and the slicing of ham, could be carried out away from the region of production. In both judgments, the Court held that neither the obligation to inform consumers that those operations occurred elsewhere, nor controls carried out away from the region of production are sufficient to ensure fulfilment of the objective pursued by designations of origin. (96)

3. Registration and its effects

78. *Chiciak and Fol*(97) and *Consorzio per la tutela del formaggio Gorgonzola* dealt with the compulsory nature of registration. In the latter judgment the Court relied on the former to rule that the protection afforded by a national government after registration by the Commission does not continue, even where that protection is wider than the Community protection (paragraph 18).

79. In *Chiciak and Fol*, the Court defined the effects of registration, when examining whether it was possible to amend unilaterally a name registered in accordance with the simplified procedure under Article 17 of the basic regulation. The Court rejected that approach and interpreted the provision 'as meaning that, since its entry into force, a Member State may not, by adopting provisions of national law, alter a designation of origin for which it has requested registration in accordance with Article 17 and protect that designation at national level' (paragraph 33).

80. As regards the effects of registration, it is also important to mention *Bigi*. (98) That dispute dealt with the question whether grated cheese could be sold as 'parmesan' outside Italy, where the cheese is produced and where use of that name is prohibited, when it did not satisfy the specification for 'Parmigiano Reggiano'. The reply was very clear: as soon as a Member State applies for registration in accordance with the simplified procedure, products which do not comply with the relevant provisions may not be legally marketed on its territory. Furthermore, once the products have been entered on the register, the system of derogations provided for in Article 13(2) of the basic regulation applies only to goods not originating in the territory of that Member State.

81. On a different level, a challenge to one of the amendments to Regulation No 1107/96, in accordance with which 'Spreewälder Gurken' was included as a protected designation of origin, (99) enabled the Court, in *Carl Kühne and Others*, (100) to address the question of the division of powers between the Member States and the Commission during the registration procedure, outlining the definition of a name 'established by usage', as referred to in Article 17 of the basic regulation. With regard to the first aspect, the Court declared that the system of division of powers is attributable particularly to the fact that registration presupposes verification 'that a certain number of conditions have been met, which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check' (paragraph 53), while it is incumbent on the Commission to verify 'that the specification which accompanies the application complies with Article 4 of Regulation No 2081/92', that is to say that it contains the required information, that there are no obvious mistakes, and 'that the designation satisfies the requirements of Article 2(2)(a) or (b)' of the basic regulation (paragraph 54). With regard to the second point, the Court held that the assessment of whether a term is established by usage is based on the checks made by the competent national authorities, subject to review by the national courts if appropriate, before the application for registration is notified to the Commission (paragraph 60).

4. Conclusion

82. All the aforementioned judgments reflect the trend, fostered by the Community legislation, towards increasing the quality of products within the framework of the common agricultural policy, thereby promoting their reputation. That was specifically pointed out in *Ravil and Consorzio del Prosciutto di Parma and Salumificio S. Rita*, (101) where designations of origin were described as having a dual aim: to guarantee the source of the designated product and to prevent fraudulent use of the name, while at the same time protecting industrial and commercial property, which, in conjunction with the principle of free movement of goods, is becoming increasingly important.

IV – Facts giving rise to the proceedings

A – The first inclusion of ‘feta’ in Regulation No 1107/96 (102)

83. On 21 January 1994, the Greek authorities applied to the Commission under Article 17(1) of the basic regulation for registration of the word ‘feta’ as a protected designation of origin in respect of a type of cheese. The accompanying file contained information concerning the geographical origin of the raw material used in the manufacture of the product, the natural conditions prevailing in the region where it was produced, the species and breeds of animals from which the milk used was obtained, the qualitative characteristics of that milk, the processes for manufacturing the cheese and its particular features.

84. Attached was Ministerial Order No 313025/1994 of the Ministry of Agriculture of 11 January 1994, (103) pursuant to which the name was protected at national level:

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

– In accordance with Article 1(2), the milk used for the manufacture of feta must come ‘exclusively from the regions of Macedonia, Thrace, Epirus, Thessaly, Central Greece, Peloponnese and the province (nomos) of Lesbos’.

– The provisions which follow govern the conditions to be met by the milk, the production process, the characteristics of the cheese, in particular its qualitative, organoleptic and taste characteristics, and the specification for the packaging.

– Article 6(2) prohibits the manufacture, import, export, despatch and marketing under the name ‘feta’ of cheese not meeting the foregoing conditions.

85. In view of the need to proceed with extreme caution, the Commission arranged in 1994 for a Eurobarometer survey of a sample of 12 800 individuals. The Final Report resulting from that survey was adopted on 24 October 1994:

– On average, one in five citizens of the European Union has seen or heard the name ‘feta’. In two States, namely Greece and Denmark, that name is in fact recognised by almost everyone.

– Of those who identify the name, the majority associate it with a cheese and a substantial proportion of the latter say that it is a Greek cheese.

– Three out of four people who know the name ‘feta’ state that it evokes a country or region with which the product has some connection.

– Of those who have already seen or heard the name ‘feta’, 37.2% consider it a common name (in Denmark the proportion is 63%) whilst 35.2% consider it a product from a particular origin (in Greece 52% are of that opinion). The remainder expressed no view.

– Finally, there are mixed feelings as to whether it is a generic product or a product from a particular origin. Of those who were immediately familiar with the name and indicated that it is a cheese, 50% regard it

as a product from a particular origin and 47% consider it to be a common name.

86. The Scientific Committee issued an opinion on 15 November 1994, in which it expressed the view, by four votes in favour and three against, having regard to the information supplied, that the conditions for registration, particularly the ones laid down in Article 2(3) of the basic regulation, had been met. The Committee also stated, this time unanimously, that the term was not generic.

87. On 19 January 1996, the Commission approved a list of names, including ‘feta’, which were eligible for registration in accordance with Article 17 of the basic regulation. The Regulatory Committee did not give a decision within the period laid down for that purpose. When the proposal was submitted to the Council on 6 March 1996, that institution also failed to give a decision within the three months available to it.

88. On 12 June 1996, the Commission adopted Regulation No 1107/96, including ‘feta’ in the Annex at Part A, ‘Products listed in Annex II to the EC Treaty, intended for human consumption’, under the heading ‘cheeses’ and the country ‘Greece’. The product was registered as a protected designation of origin (‘PDO’).

89. The Danish, German and French Governments contested that registration and each brought an action for annulment before the Court.

B – The ‘Feta’ judgment

90. The judgment brought the three disputes to an end, annulling Regulation No 1107/96 to the extent to which it registered ‘feta’ as a protected designation of origin.

91. Essentially, the applicants put forward two pleas in law, based on Articles 2(3) and 3(1) of the basic regulation. By the first plea, they claimed that the conditions for registration had not been met, in that the product referred to did not originate in a region or a specific place and did not display any quality or characteristics which were essentially or exclusively due to the geographical environment, with its inherent natural and human factors, from which it originates. By the second plea, they argued that the term was generic, from which it followed that it could not be registered.

92. The Court started by examining the second plea, because the prohibition applies to all categories of name including ones which fulfil the conditions for them to be granted protection (paragraph 52).

93. First of all, the Court outlined the arguments of the applicant Member States (paragraphs 53 to 64), followed by the arguments of the Commission and Greece, which – as in the present proceedings – intervened in support of the lawfulness of the contested regulation (paragraphs 65 to 77). The Court then gave its findings, from which it is appropriate to draw attention to the following points:

– The prohibition of registration in Article 3 of the basic regulation is also applicable ‘to names which have always been generic’ (paragraph 80).

– In the light of the arguments put forward by certain governments in relation to that question, ‘either in the context of preparation of the draft list of generic

names ... or in the procedure for adoption of the contested regulation', importance must be attached to 'the considerations' put forward by the Commission prior to and during the application process (paragraphs 82 to 86).

– Analysis of those considerations reveals that the Commission 'minimised the importance to be attached to the situation existing in the Member States other than the State of origin and considered their national legislation to be entirely irrelevant' (paragraph 87), factors which, together with the existing situation in the Member State in which the name originates and in areas of consumption, are specifically referred to in Article 3(1) (paragraph 88).

– In accordance with the foregoing, under the second indent of Article 7(4), 'the fact that registration of a name ... might jeopardise the existence of products which are legally on the market constitutes a ground on which a statement of objection from another Member State may be admissible', which, notwithstanding that it is specifically provided for in respect of the normal registration procedure, also has a bearing on the simplified procedure, since regard must be had to 'traditional fair practice and of the actual likelihood of confusion' (paragraphs 91 to 94).

– In addition, account must be taken of the existence of products on the market which have been legally marketed under that name in Member States other than the State of origin by which registration is applied for (paragraph 96).

– In the case under consideration no account was taken of the fact that the disputed name 'had been used for a considerable time in certain Member States other than the Hellenic Republic' (paragraph 101).

94. In the light of the above factors, it was found that the Commission had not taken into account 'all the factors which the third indent of Article 3(1) of the basic regulation required it to take into consideration' and on those grounds the Court gave judgment annulling the regulation, as mentioned above.

95. The judgment did not look at the substantive requirements for registration, in particular the alleged generic nature of the term concerned, and merely considered the assessment carried out by the Commission which was held to be incomplete. Nor did the Court check whether the conditions laid down with regard to traditional names had been met.

C – The second inclusion of 'feta' in Regulation No 1107/96 pursuant to Regulation No 1829/2002

96. In the light of the aforementioned judgment, Regulation No 1070/1999 deleted the name 'feta' from the register.

97. However, having regard to the grounds for that annulment, the Commission wished to undertake a detailed, up-to-date survey of the position in the Community, as regards production and consumption of, and familiarity with, feta, to which end, on 15 October 1999, it sent a questionnaire to all the Member States. It is important to analyse that survey at some length since it is highly indicative. (104)

(a) Only Greece – since 1935 – and Denmark – since 1963 – have specific legislation on the production of feta, (105) although Germany and France also make it:

– Greece produced 115 000 tonnes, nearly all of which was for the domestic market.

– Production in Denmark reached 27 640 tonnes in 1998, intended mainly for export.

– Germany began production in 1972, and its output ranged from 19 757 to 39 201 tonnes, which was initially consumed by immigrants but was later aimed at the export market.

– France started to produce feta in 1931, with production reaching 19 964 tonnes, three quarters of which is sold to other countries. (106)

It is important to point out that, whereas the Greeks use only ewes' milk, or a mixture of ewes' milk and goats' milk, the Danes and Germans use only cows' milk, while the French use ewes' milk and, to a lesser extent, cows' milk.

(b) Turning to consumption, subject to the qualifications made in that regard, (107) it can be inferred that 92% of consumption occurred in the Hellenic Republic at the time of its accession to the Community; that figure subsequently dropped to 73%, as a result of increased consumption in other countries. A breakdown of consumption per person per year reveals the following information:

– In Spain, Luxembourg, Portugal, Italy and the Netherlands, consumption is no more than 0.010 kg (around 0.08% of the Community total).

– In Ireland, the United Kingdom, Austria, France, Sweden, Belgium and Finland, consumption fluctuates between 0.040 and 0.150 kg (between 0.32% and 1.22%).

– In Germany it is 0.290 kg (2.36%).

– In Denmark it is 0.700 kg (5%).

– Greece accounts for 10.500 kg (85.64%).

(c) It appears that consumers generally tend to associate 'feta' with Greece, as a result of the labelling of the cheese, (108) the way it is described in publications, and advertising.

98. That information was forwarded to the Scientific Committee which, on 24 April 2001, issued an opinion, approved unanimously, (109) stating that the word 'feta' was not generic for the following reasons:

(a) Production and consumption of feta are heavily concentrated in Greece, where they use a raw material and a production process which are different to those used in other Member States; as a result, Greece has a dominant position in the single market. In the Member States where it is neither produced nor consumed, the name 'feta' is not used, from which it follows that it cannot be classed as a common name.

(b) In consumers' perception, the word 'feta' evokes a specific origin, namely Greece.

(c) In Member States with specific legislation for the product concerned, there are notable technical differences; the fact that the designation is used in the common customs nomenclature or in Community legislation on export refunds is not relevant in this context.

99. Having checked the information available to it, the Commission proposed that ‘feta’ should once again be protected. (110) The Regulatory Committee failed to give an opinion in the time-limit set by its chairman. When the proposal was submitted to the Council, it did not issue an opinion within three months.

100. That being the case, Regulation No 1829/2002 approved the entry in the register, provided for in Article 6(3) of the basic regulation, of ‘feta’ as a protected designation of origin, ‘[s]ince the term ... has not been established as generic’ (recital 34) and is ‘a traditional non-geographical name’ (recital 35).

D – Canadane Cheese Trading and Kouri

101. In the above reference for a preliminary ruling, the judgment of the Court was pending with regard to the measures described above, which the Greek Government adopted to protect the name ‘feta’. However, that judgment was not delivered because the referring court withdrew the questions and the Court was therefore obliged to shelve the proceedings by order of 8 August 1997.

102. It is important to recall, albeit briefly, the details of that case and the considerations I set out in the Opinion.

103. Notwithstanding a number of already established practices and a first restrictive measure, (111) the Greek Government began a process of gradual regulation of the conditions of production and marketing of feta cheese with Ministerial Order No 2109/1988 (112) of the Ministries of Finance and Agriculture, and continued the process with two other Ministerial Orders of the same ministries, No 688/1989 (113) and No 565/1991, (114) which amended Article 83 of the Foodstuffs Code, a provision which was also amended by Ministerial Order No 313025/1994, referred to above.

104. Pursuant to that provision, the Greek authorities prohibited the sale under the name ‘feta’ of a consignment of cheese imported from Denmark. The Danish undertaking Canadane Cheese Trading AMBA and the Greek undertaking Afoi G. Kouri A EVE challenged that prohibition and the condition that for entry on to the market the description ‘white cheese in brine made in Denmark from pasteurised cows’ milk’ must be used (points 1 to 6 of the Opinion). In the proceedings which followed, the Council of State referred three questions (point 7) to the Court, seeking guidance on whether legislation prohibiting the sale in a Member State, under the name ‘feta’, of a cheese lawfully produced and marketed under the same name in another Member State constituted a measure having equivalent effect, contrary to Community law, and, if that was the case, whether there was any justification for the prohibition (point 46).

105. In the Opinion, I discussed the production and marketing of feta cheese in the Community (points 9 to 19), describing the production process in Greece and the main qualities of the cheese, namely, its natural white colour, its characteristic taste and smell (slightly acid, salty and greasy), and its compact texture (points 15 and 16). I also described in detail the provisions of

national law governing the cheese (points 20 to 25). In view of the fact that the basic regulation had not entered into force at the material time, I undertook a detailed analysis of the case-law of the Court and of the Community rules on the selling names of products. With regard to the latter question, I proposed the following categories:

(a) Community names (point 27), which cover ‘eurofoods’, such as honey and chocolate, and are marketed without restriction.

(b) Generic names (points 28 to 34), which comprise common names used to designate agricultural or food products; they form part of the general cultural and gastronomic stock and may, in principle, be used by any producer. I gave as examples vinegar, geneva, beer, pasta, yoghurt, Edam cheese, cheeses, cold meats and bread.

(c) Geographical names (points 35 to 44), which designate food products by alluding to their origin from a particular area. That reference may be direct, when a precise reference is included (Manchego Cheese, Parma Ham, Faba Asturiana and Normandy Camembert), or indirect, when no place-name is included (tetilla cheese, reblochon, grappa, ouzo, cava).

106. Turning to the substance of the questions referred, it was necessary first of all to establish whether the contested legislation constituted a measure having equivalent effect, contrary to Article 30 of the Treaty. If the reply to that question was in the affirmative, it would then be necessary to consider whether the measure was justified.

(a) By analysing the national legislation in the light of the case-law of the Court, I concluded that it was a measure having equivalent effect to a quantitative restriction within the meaning of the Treaty (points 47 to 49).

(b) Accordingly, it was necessary to determine whether the restriction was covered by Article 30 or, where applicable, Article 36, of the Treaty:

– In order to establish the scope afforded by the consumer protection and fair trading derogation, I examined the similarities and differences between the Greek and Danish cheeses, by reference to their composition and production methods (points 61 and 62), international standards (point 63), legislation and consumer expectations in the importing country (point 64) and in the other Member States (point 65), and Community acts (point 66). My conclusion was that there is no substantial difference between the two products and that adequate labelling would have safeguarded consumers and fair trade (points 67 and 68).

– However, having regard to the fact that my analysis was based on the Greek legislation in question, the restriction was permitted on the grounds of the protection of industrial and commercial property, because in Greece the name ‘feta’ satisfies the conditions stipulated in Exportur, in that: (a) it indicates indirectly the geographical origin of the cheese marketed under that name (point 73); (b) it guarantees a food which has certain characteristics and a quality which gives it a high reputation amongst consumers in Greece (points 74 and

75); (c) it is protected by domestic law (point 76); and (d) in Greece the name has not undergone an irreversible process of erosion which might have changed it into a generic name (point 77).

107. In the light of those considerations, I proposed that the Court reply as follows to the questions referred for a preliminary ruling:

(1) Legislation of a Member State which prevents the marketing, under the sales description “feta”, of a cheese lawfully produced and marketed under that name in another Member State is a measure having equivalent effect to a quantitative restriction, contrary to Article 30 of the EC Treaty.

(2) Legislation of a Member State which restricts to national products the use of the name “feta” is not justified on the grounds of consumer protection or fair trading.

(3) Legislation of a Member State intended to protect the rights which are the specific subject-matter of a geographical name, such as the name “feta”, is justified on the ground of protection of industrial and commercial property referred to in Article 36 of the EC Treaty.’

V – The actions for annulment

108. Germany and Denmark, supported by France and the United Kingdom, seek the annulment of Regulation No 1829/2002. (115) The Commission contends that the regulation is lawful. That contention is supported by Greece, which, in its observations, also maintains that the actions must be declared inadmissible on the ground that they were brought outside the time-limit.

109. In its application, Germany puts forward a number of pleas for annulment on procedural grounds. Those pleas must be examined before the substantive pleas, which, in both the German and the Danish applications, are essentially the same as those put forward in the applications in Feta, namely, that ‘feta’ is a generic name and does not satisfy the requirements for treatment as a traditional name or for protection under the basic regulation.

110. At the hearing held on 15 February 2005, oral argument was presented by the representatives of Germany, Denmark, France, Greece and the Commission.

A – Admissibility of the actions for annulment

111. The Greek Government claims that, at the time when the applications were lodged on 30 December 2002, the period of two months specified in Article 230(5) EC had already expired because the regulation had been published in the Official Journal on 15 October 2001.

112. That procedural objection must be dismissed, since the period set in the Treaty for contesting a provision must be calculated in accordance with the rules laid down in Article 81 of the Rules of Procedure, (116) paragraph 1 of which provides that, ‘[w]here the period of time allowed for initiating proceedings against a measure adopted by an institution runs from publication of that measure, that period shall be calculated, for the purposes of Article 80(1)(a), from the end of the 14th day after publication thereof in the Official Journal of the European Union’. Article 81(2) provides

that ‘[t]he prescribed time-limits shall be extended on account of distance by a single period of 10 days’.

113. Pursuant to those provisions, in the cases before the Court the two months began to run on 30 October rather than 15 October, meaning that by lodging the applications at the Registry of the Court on 30 December the applicants did so within the time-limit.

114. Accordingly, it is appropriate to dismiss the plea of inadmissibility alleging that the applications were lodged out of time.

B – Procedural pleas in law

115. Germany puts forward a number of procedural grounds for annulment alleging infringement of the rules of procedure of the Regulatory Committee and of the Regulation determining the languages to be used by the Community, (117) and also alleging that the statement of reasons was insufficient.

1. Infringement of the time-limits and the rules on the use of languages

116. The German Government states that the invitation to the meeting of the Regulatory Committee of 20 November 2001 was sent by email on 9 November 2001 and included a number of attachments in French and English only; a translation of those attachments was not provided, despite a complaint made in that regard.

117. The German Government next complains that the invitation was sent less than 14 days in advance, (118) and that versions of the attachments in all the languages were not provided. The Commission does not contest those facts but disagrees about their legal effects.

118. When dealing with that issue, it must be recalled that a procedural requirement does not constitute an end in itself. That approach is all the more relevant where the final result would have been the same had the defects not occurred. (119)

119. It is important to bear in mind that the minutes record that the meeting of 20 November 2001 merely involved a discussion about the ‘feta’ file and about the summary of the responses to the questionnaire sent by the Commission. On 16 May 2002 the draft regulation was discussed and put to the vote. (120)

120. In the light of those factors, it is possible to distinguish the present situation from the one in *Germany v Commission*, (121) a case invoked by the applicant, where the procedural defects identified by the Court, on the basis of which the contested act was annulled, arose in the meeting at which the proposal for that act was debated. By way of a summary of its findings, the Court held in paragraph 32 that ‘... the adoption of the opinion of the Standing Committee on Construction, without regard to the obligation to send the draft document to its two separate addressees within the time-limit laid down and without the vote having been postponed despite the request made by a Member State, is vitiated by infringement of essential procedural requirements, with the result that the contested decision is void.’

121. In the Opinion I delivered in that case, I drew a distinction, by reference to the rules of procedure of the committee concerned, between cases involving the communication of preparatory documents for a meeting

and working documents in general and those involving the discussion of the adoption of a particular measure. In both cases, the procedural requirements are important but they only become substantive in nature in the second case, where the rule that documents of the institutions must be drafted in the language of the State to which they are sent, laid down in Article 3 of Regulation No 1, applies in full.

122. In line with that approach, the defects affecting the meeting of 20 November 2001 are not substantive and, accordingly, they do not justify the annulment of the contested regulation, the proposal for which was debated at a subsequent meeting on which those defects have not been shown to have had any effect whatsoever. Nor does it appear likely that the failure to send the invitation a sufficient number of days in advance of the meeting and the fact that there was no translation of the opinion of the Scientific Committee or of the information arising from the survey, would have prevented the German Government from exercising its rights.

123. Moreover, it is difficult to imagine that, if the defects had not occurred, a different outcome would have arisen in the subsequent decision of the Regulatory Committee on the draft submitted by the Commission. Indeed, it seems reasonable to suppose that the outcome would have been the same, in other words, that there would not have been a majority of votes. As concerns the action taken, annulment of the contested regulation would result in the clock being turned back to the time when the defects occurred only, in all probability, for the same outcome to occur once those defects had been remedied.

124. It is in those terms that it is appropriate to construe recital 10 of the contested regulation, which states that the Commission summarised the information received overall and by Member State, and the Member States subsequently made a number of corrections and amendments. The fact that the latter statement is partially incorrect does not justify annulment.

2. Insufficient statement of reasons

125. In the Opinion I delivered in *Portugal v Commission*, (122) I pointed out that the statement of reasons 'is an essential part' of a measure (123) and that the obligation to provide reasons is not only for the protection of interested parties, but is also intended to provide the Court with the information necessary to enable it to undertake fully the appropriate legal review. (124) In addition, according to the case-law of the Court, the statement of reasons must show clearly and unequivocally the reasoning of the institution which enacted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. It is not necessary, however, for details of all relevant factual and legal aspects to be given, provided that an assessment is made not only of its wording but also of its context and of all the legal rules governing the matter in question (125) (point 83).

126. The Commission explains in the contested regulation how, at the request of the Greek authorities, it registered 'feta' only to delete the name following the

judgment in *Joined Cases C-289/96, C-293/96 and C-299/96* (recitals 1 to 5). The Commission goes on to describe the questionnaire sent to the Member States for the purpose of assessing the production and consumption of feta and the knowledge of the term professed by Community consumers, and sets out and comments on the details of that survey (recitals 6 to 21). Next, the Commission refers to the opinion issued by the Scientific Committee, setting out the final section of that opinion (recitals 22 to 32). Subsequently, the Commission notes 'that the exhaustive overall analysis of the legal, historical, cultural, political, social, economic, scientific and technical information notified by the Member States or resulting from investigations undertaken or sponsored by the Commission leads to the conclusion that in particular none of the criteria required under Article 3 of Regulation (EEC) No 2081/92 to show that a name is generic have been met' (recital 33), and that instead 'feta' is a traditional non-geographical name, before dealing in some detail with the natural and human factors which influence the production of the cheese to which the name refers (recitals 34 to 36). Finally, the Commission refers to the fact that the product specification includes all the required information (recital 37), to the need to amend Regulation No 1107/96 (recital 38), and to the procedure followed (recital 39).

127. It is clear from the above that an adequate statement of reasons was provided. Although one might call into question the extent and the subject-matter of the reasons stated, that complaint does not touch on the lawfulness of the justification for the decision.

C – Substantive pleas in law

128. When examining the two substantive pleas for annulment submitted, it is appropriate to follow the order proposed by the Court in the *Feta* case, that is, to analyse first whether the name 'feta' can be classed as generic before going on to assess whether it is a traditional name. (126)

1. 'Feta' as a generic name

129. It is appropriate to consider first of all what is meant by generic, then to deal with the factors laid down in the legislation for delimiting the term and to apply those factors to this case.

a) The meaning of 'generic'

130. The quality of being generic refers to what is common to several species, and includes characteristics which belong to the same class or family and which define the nature or attributes of that class or family. That is the case, for example, with orange, a name applying to all fruits with a particular kind of shape, colour, smell and taste which distinguish them from all other fruits. (127)

131. That character is attributable either to the word itself – in that it has always been generic – or to the fact that it has gradually become generalised. Such names have either never had or have lost their indicative function and cannot therefore be used to distinguish by reference to their origin.

132. Notwithstanding that the case-law of the Court provides no definition of 'generic name', (128) I point-

ed out in the Opinion in *Canadane Cheese Trading and Kouri* that use of the term in relation to food products encompasses names which ‘form part of the general cultural and gastronomic stock and may, in principle, be used by any producer’ (point 28). Thus, the term also covers words which are not linked to production in a particular place and therefore to the provenance of the product but only to its characteristics, linked to the fact that similar manufacturing processes are used. (129)

133. The term ‘generic’ can also be applied to names which originally had a geographical meaning but then lost that meaning because the names underwent a process of generalisation; as a result such names are no longer used to describe a product with a particular origin, from which it follows that their use is not reserved to undertakings situated in the region concerned.

134. The usual reason why a name comes into popular usage (130) is that producers who are not established in its place of origin start to use the name, either on its own or with a ‘de-localising’ word (in the latter case the process is slowed down). Often, usage begins in areas which have seen the arrival of a large influx of migrants, either because producers once again take up the activity they pursued in their country of origin and carry on that activity in the host country, or to meet demand from recent arrivals who wish to eat their traditional foods. In both cases, the specific aim of the producers concerned is to take advantage of the reputation which the product has already earned. As the geographical link weakens, producers continue in good faith, believing that the name in question refers only to a type of product having certain characteristics. The transformation is complete when the name refers to a category and is used freely.

135. Another factor which has a bearing on the process is the passivity of consumers. A name will decline if no action is taken by consumers and the authorities in response to its misuse, whereas it will be strengthened if there is an appropriate reaction. However, it must be recalled that protective measures can be weakened by a shortage of legal provisions, which did not exist at all until very recently, and by apathy on the part of national courts. (131)

b) Criteria for delimitation

136. Under the system provided for in the basic regulation, responsibility for determining whether a name is generic is assigned to the Commission, which must make a decision in accordance with the procedure laid down, having regard to the opinion of the Scientific Committee. That responsibility also falls, to a lesser extent, to the Council since, as I have already observed, it is required under Article 3(3) to draw up a list of generic names identifying agricultural products or foodstuffs.

137. That system does not preclude a subsequent wide-ranging review by the Court of the lawfulness of the decision. The aim is not that the Court should take the place of the Commission and analyse the extra-judicial grounds for permitting registration of the name; instead the Court must establish whether the registration is lawful. (132)

138. The difficulty arises because the legal concept in question is indeterminate and must be assessed on a case-by-case basis, and because registration of a designation of origin, in so far as it expresses ‘the historical, cultural, legal and economic reality’ that attaches to the product, (133) becomes more difficult the more popular the name concerned is and the more frequently it is used.

139. The basic regulation acknowledges that in most cases determination of whether a name is generic is an arduous and complicated task. With a view to simplifying the task, the regulation provides two methods of delimitation, by requiring that a list of common names be drawn up (Article 3(3)) and by setting out criteria for assessment (Article 3(1)). (134)

140. As I observed above, an agreement has yet to be reached regarding approval of a list of names which may not be registered on the grounds that they are generic, (135) which indicates the difficulty of the task. Accordingly, the other system of delimitation becomes all the more important, and the mere fact that such a system exists demonstrates that ‘generic’ may not be defined as the opposite of ‘exclusive’. (136)

141. Moreover, the assessment must be made on the basis of ‘all factors’ but with reference to three ‘in particular’, namely, the situation in the Member State in which the name originates and in areas of consumption, the situation in other Member States, and the relevant national or Community laws. Therefore, there is nothing to preclude other factors from being taken into account.

i) The situation in the Member State in which the name originates and in areas of consumption

142. That heading comprises two distinct elements which must not be permitted to overlap: the situation of the product in the place of provenance and the situation in the place where it is consumed.

– The situation in the State of origin

143. In *Exportur*, the Court drew attention to the importance of this criterion, stating that protection of a name extends to another Member State only in so far as that name continues to be legitimate in the State of origin. However, when assessing that situation, account must be taken not only of protective measures but also of other factors such as, for example, the extent of production and consumption, the views of inhabitants, and the interest shown.

144. It is clear from the case-file that Greeks are unanimously of the opinion that ‘feta’ refers to a traditional national product produced from a particular kind of milk using a specific process. An analysis of the information collected by the Commission leads to the same conclusion.

145. The applicants do not contest those facts but draw attention to other factors which are undeniably of particular significance in that the aim is not to extend from one country to another the protection of certain names, but rather to provide harmonised legal protection throughout the Member States.

– The situation in areas of consumption

146. It must, of course be pointed out that, although initially the consumers of a product come from the place in which the product originates, usually, after a while, the product reaches consumers in other areas and the initial identification with that place is lost. Frequently, a product can be purchased in many different areas which have no connection with the area where it is produced or originates. That explains why, for the purpose of determining whether or not the name of a product is generic, the perception of the name in those places is important.

147. The expression 'areas of consumption' refers to consumers. Academic legal writers have emphasised the importance of the opinion of consumers with regard to classifying a name for legal purposes, (137) since consumers act as the ultimate interpreters of the meaning a name has on the market. However, the primary issue in the present cases is not the protection of consumers but rather the protection of industrial and commercial property rights, which is enshrined in the Treaty.

148. At first sight, it appears that only Community areas of consumption need to be taken into account. It has been pointed out that feta is also produced and marketed in the Balkans. Since Article 3 of the basic regulation requires that regard must be had to 'all' factors having a bearing on the classification of a name, I will restrict the assessment to the situation in regions of the Community for the time being and consider later the situation elsewhere.

149. Second, areas of consumption must also include areas of provenance where, as in this case, the two coincide. Thus, regard must be had to the opinion of Greek consumers, amongst whom the name 'feta' enjoys a high reputation, thereby assisting producers to retain a highly important customer base.

150. From that multiple point of view, Greek consumers identify feta as being a national product and a high proportion of consumers in the other Member States associate the cheese with Greece, since the labelling contains express or implied references to Greek culture, although, exceptionally, labels, books, magazines, and other non-specialised publications exist which do not contain such references.

ii) The situation in other Member States

151. There is no requirement that the product must be consumed everywhere, and this factor therefore affects two spheres. The first is the general situation in countries other than the one in which the name originates, and the second is the situation in States where the cheese is also produced.

– The general situation in other States

152. In the light of the information obtained in the Eurobarometer survey and of the results of the questionnaire sent by the Commission, it appears that, as in areas of consumption, where the name 'feta' is recognised, individuals and publications in the first sphere described associate the cheese with Greek culture. That is not the case in Denmark and Germany, or, albeit to a lesser extent, in France, because in those countries there is large-scale production of the cheese,

a factor which must be considered in relation to the second sphere.

153. In all other respects, one statistic must be emphasised: one in five people asked is familiar with name. Had the name become generic, would not a greater number of those surveyed have recognised it? It must be recalled that at stake is the protection of industrial and commercial property rights throughout the Community, not merely in the places where feta is currently produced and consumed, since it is likely that, in the future, consumption of the cheese will increase. In other words, familiarity with the name must be widespread and not just confined to the territory of those States involved in the commercial production of feta.

– The situation in States which produce the cheese

154. As concerns the second sphere, in Feta the Court warned of the need to take account of products marketed under that name in Member States other than the State of origin (paragraph 96).

155. In support of that assertion, the Court relied on the second indent of Article 7(4) of the basic regulation, which refers to that case as a ground of objection to registration. However, that provision is intended to apply to registration under the normal procedure, (138) whereas at issue in this case is a name already protected under national rules for which protection at Community level was effected under the simplified procedure. The two situations are therefore different.

156. In the light of the foregoing, I believe that the assertion made by the Court in Feta was intended to draw attention to a particular factor, namely, the situation in other Member States, not with the intention of giving that situation priority over other factors but rather to prevent its importance from being minimised, which is what the Commission initially did. Accordingly, the view expressed in the judgment must be qualified, since, otherwise, (a) the inaction theory would be accepted outright and that would fail to take account of the fact that many undertakings were unable to enforce their legal rights prior to the entry into force of the legislation concerned, as a result of which they were placed at a serious disadvantage because a process of generalisation, resulting merely from infringement of the name by unauthorised third parties, was permitted to take place; (b) there would be a conflict with previous case-law, since in *SMW Winzersekt*, which dealt with the protection of the names of wines, the Court held that, in order to achieve the objective of designations of origin, it was essential '... that the producer should not derive advantage, for his own product, from a reputation established for a similar product by producers from a different region ...' and that '... the final consumer should receive sufficiently accurate information to enable him to form an opinion of the products in question'; and, finally, (c) attaching greater weight to that factor would disadvantage those goods whose dynamics mean that they enter markets in other regions shortly after first appearing on a particular market, since, using the most recent technological ad-

vances, competitors would imitate those goods and use the same name.

157. In short, the reference to fair trade in goods with the same name must be construed in accordance with the system of protection laid down. That global approach means simply that, in cases such as the one before the Court, regard must also be had to the situation in other Member States. However, under no circumstances will that situation alone suffice to preclude registration applied for under the procedure laid down in Article 17 of the basic regulation.

158. Turning now to the factor under consideration, it must be noted that in Denmark, Germany and France, in particular, a cheese is produced under the name 'feta' using a different type of milk and a different production process from the ones used in Greece.

159. In that regard, it is useful to summarise the points set out in points 61 and 62 of the Opinion in *Canadane Cheese Trading and Kouri*:

(a) The kind of milk used means that, since ewes' milk and goats' milk have different chemical and organoleptic characteristics from cows' milk, the following differences are manifested in the resulting cheese:

– The use of ewes' milk gives rise to a pure white cheese, while the use of cows' milk leads to a yellowish white colour which can only be removed by chemical substances.

– When ewes' milk is used, the cheese has an oily, salty and slightly acid taste and a strong aroma, whereas feta made from cows' milk has less aroma and a sweeter taste.

– The use of cows' milk gives the cheese fewer holes than ewes' milk feta because the effect of the brine is different.

(b) Although the cheese matures faster with ultra-filtration, since the whey is removed before the curds are formed, it does not appear that the difference in production processes has a significant effect.

iii) The relevant national and Community legislation

160. The basic regulation requires that legislation in force in the Member States and in the Community be taken into consideration.

– Legislation of the Member States

161. The aim of the reference to national measures is to establish whether the name concerned is protected in the country of origin and in other States, irrespective of the turnover it yields. In that regard, it is important to recall a matter which I have already mentioned, namely that prior to the Community legislation most Member States did not have legal measures in place for protecting geographical indications, which, to a certain extent, reduces the importance of this factor.

162. Indeed, the Greek legislation of the 1980s was restricted to setting out in written form the traditional use of the name, which dates back several centuries, and to laying down rules for the production and marketing of feta.

163. Measures concerning feta were also adopted in Denmark (and in the Netherlands where they remained in force for only a short time), but those measures do

not impose restrictions on trade since it would be contradictory to protect a name which the Danish Government has argued is generic.

164. It should also be pointed out that Austria reserves the name to cheese originating in Greece, pursuant to the bilateral agreement concluded on 20 June 1972.

– The Community legislation

165. In this regard, the criteria taken into account when assessing whether a name has become generic have included the Common Customs Tariff nomenclature and the Community legislation on export refunds.

166. However, having regard to the aim pursued, those factors cannot be taken as defining criteria in the field of industrial property rights. (139) The same applies to provisions adopted in the context of the common agricultural policy which are designed to maintain certain prices. When such provisions are adopted and implemented, no assessment is made of whether the persons to whom they are addressed are using a particular name lawfully. At most, the provisions concerned could be regarded as having the potential to provide guidance which is in no way conclusive.

167. An example will illustrate the effects of stringent application of the combined nomenclature. (140) The *Mozartkugeln* is a famous Austrian speciality made from marzipan and nougat covered in milk chocolate. If the *Mozartkugeln* were classified as a chocolate-based product, notwithstanding that it contains only a minimum amount of chocolate, it would be excluded from the basic regulation on the ground that it is not referred to in Annex I to the Treaty. If the *Mozartkugeln* were classed as a cake it would appear in the list in Annex I to the basic regulation, even though it contains some chocolate.

iv) Other factors

168. It is important to bear in mind the obligation to take account of all relevant factors. Academic legal writers have suggested a number of examples: inclusion of the word concerned in reference works, such as dictionaries, travel books and restaurant guides; (141) turnover inside and outside the designated region or the region to which the name is principally connected; (142) and the fact that the name is classified as generic in an international treaty ratified by at least one of the Member States. (143)

169. In the case before the Court, two factors must be accorded particular emphasis, namely, the situation in non-member countries and the temporal aspect.

– The situation in non-member countries

170. The need to establish the situation in non-member countries is derived from the reference to 'areas of consumption' in Article 3(1) of the basic regulation and from Article 12, which provides that the regulation may apply 'to an agricultural product or foodstuff from a third country', provided that certain conditions are met.

171. In these proceedings for annulment it is common ground that white cheese in brine resembling feta is produced in other European countries, such as Bulgaria. Similar kinds of cheese are produced in Iran and Saudi Arabia, using ewes' milk, and in the United

States and New Zealand, where cows' milk is normally used. (144)

172. Accordingly, the perception of the name in those countries may serve as a parameter for establishing the correct delimitation of the name 'feta', although, in the light of the aim of the protection concerned, it is important not to exaggerate the influence of that perception, notwithstanding that, in common with other names, the territorial scope of 'feta' has been extended pursuant to international agreements. (145)

– **The temporal situation**

173. Even where it appears that the situation in the Member State by which the application for registration is made relates to the present, recollection of the past also has an effect on the perception of whether the name has become generic, particularly with regard to establishing whether a name has always been generic. Historical perspective has a significant bearing on this question.

174. Recalling the considerations I set out in the Opinion in *Canadane Cheese Trading and Kouri*, it is important to point out that the name 'feta' is of Italian origin and is derived from 'fetta', which means slice, slab or chunk. It was brought into Greece through the influence of Venice and gained acceptance in the 19th century to designate the traditional white cheese in brine which has been made since ancient times in most of Greece and other parts of the Balkans.

Homer's *Odyssey* recounts how Polyphemus '... sat down to milk his ewes and bleating goats, which he did methodically, putting her young to each mother as he finished. He then curdled half the white milk, gathered it all up, and stored it in wicker baskets ...'. (146) In this way the Cyclops, Polyphemus, made the cheese which Ulysses and his men found in the cave. It is not surprising that, in using this method of making cheese, which is very similar to that traditionally used in modern Greece, Polyphemus was unaware of the legal problems which the free movement of that product in the European Community was going to cause at the end of the 20th century, not only because he could not have predicted, 27 centuries in the future, the complex stratagems of protected names, but also because of his own nature, as the Cyclopes are beings with no idea of justice and the law. (147) The *Odyssey* also alludes to the story of the daughters of Pandareus, who in olden times were 'rapt away by the Demons of the Storm' after 'the gods had robbed them of their parents and left them orphaned in their home; and yet they lived, and flourished on the cheese, the sweet honey, and the mellow wine that Aphrodite brought them'. (148)

Another of Homer's poems, *The Iliad*, shows the importance of cheese in the Greece of the 8th century BC. (149)

Feta is made from ewes' milk or a mixture of ewes' and goats' milk by the natural straining method, without applying pressure. The production of feta was not regulated by the Greek authorities until 1988 by which time different local or regional variants had come into existence (points 14 to 16 of the Opinion).

175. The fact that there were no technical specifications at international level meant that a different, more modern and competitive method of production of feta could be developed in different Member States and in other countries, aimed initially at satisfying demand from Greek immigrants, as the representatives of Germany and France observed at the hearing. In the second half of the 20th century, Denmark, Germany and the Netherlands began to produce a cheese from cows' milk using an industrial ultra-filtration process; that cheese was marketed under the name 'feta'. In France, a cheese called 'feta' is made from cows' milk, while in some areas, such as the island of Corsica and some parts of the Massif Central, it is made from ewes' milk, although in the latter region feta is made to use up the milk not needed for the production of Roquefort (point 17 of the Opinion).

176. Why did those producers decide to give the name 'feta' to white cheese in brine made using cows' milk? There can be no doubt that they did so to ensure that the cheese had a name which meant something to consumers. In short, as the Commission asserted at the hearing, they were looking for a name which could increase sales. (150)

c) Analysis of the criteria and effects

177. The basic regulation does not list in order of importance the relevant factors for determining whether a name is generic, so the question arises whether any of the factors take precedence over the others.

178. In the *Exportur* judgment, which was delivered before the basic regulation entered into force, the Court took the view that greater weight should be attached to the situation in the place of origin, and I applied that case-law in the Opinion in *Canadane Cheese Trading and Kouri*. (151)

179. However, in *Feta*, the Court amended that case-law and held that equal weight must be attached to all of the factors specifically referred to in the relevant provision, (152) particularly the situation in other Member States. Thus, none of the factors take precedence, from which it follows that they must all be taken into account. Moreover, other factors may also be considered. Provided reasons are given, there is nothing to preclude the attachment of greater weight to a particular factor during the assessment, since the instrumental nature of the factors, whose purpose is to delimit an indeterminate legal concept, makes them dependent on their ability to achieve that objective.

180. Following that line of reasoning, the question arises as to whether the name 'feta' has changed to the extent that its meaning has expanded to designate a whole family of cheeses, irrespective of their origin, method of production, or ingredients.

181. In addition to a separate analysis of each factor, it is essential to undertake an overall assessment, taking into account:

– All the facts directly and indirectly connected to the case, since sometimes, as in the present case, the historical perspective becomes vitally important.

– The factual and legal arguments of the parties and the evidence adduced in the proceedings with regard to the contested registration.

– The opinion of the Scientific Committee, issued by highly qualified professionals (Article 3 of the Decision establishing that committee). (153)

– The opinion poll carried out at the relevant time and the replies provided to the questionnaire sent by the Commission. (154)

182. Those considerations lead me to conclude that the name has not become generic at Community level or in Greece itself, as I argued in the Opinion in *Canadane Cheese Trading and Kouri*, since the name ‘feta’ is inextricably associated with a specific food, that is, a cheese produced in a large part of Greece from ewes’ milk or from a mixture of ewes’ milk and goats’ milk, using the natural craft method of straining without applying pressure.

183. To refuse to authorise the monopoly of the name, including in cases where the cheese is produced by the same method elsewhere, would be on a par with depriving an inventor of his patent rights on account of the fact that someone else came up with a similar creation after registration of the invention. (155)

2. ‘Feta’ as a traditional name

184. If the Court agrees with the foregoing considerations and holds that the name is not generic, it will be necessary to turn to Article 2(3) of the basic regulation, pursuant to which ‘[c]ertain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a) shall also be considered as designations of origin’.

185. Since ‘feta’ does not refer directly to a specific place, it is necessary to establish whether the name fulfils the requirements laid down for geographic indications, namely, whether it is traditional, whether it refers to a food originating in a region or a specific place, whether its quality and characteristics are essentially or exclusively due to the geographical environment, and whether its production, processing and preparation take place in a defined area for the purpose of obtaining a particular end result.

a) The traditional nature of the name

186. Tradition evokes the passing down from generation to generation of information, teachings, stories, rites and customs. Behaviour which is ruled by ideas, standards and practices from the past is described as traditional.

187. In accordance with the points I made regarding the perception of a name in relation to time, there can be no doubt that the word ‘feta’ displays the characteristics required for it to be regarded as ‘traditional’ for the purposes of Article 2(3) of the basic regulation. However, that finding alone is not a sufficient basis for registration. The other requirements laid down must also be met.

b) The name of a food originating in certain geographical areas

188. As I stated in the Opinion in *Canadane Cheese Trading and Kouri*, in the same way that the names ‘grappa’, ‘ouzo’ and ‘cava’ allude indirectly to Italian, Greek and Spanish origins and are linked to specific regions without containing the corresponding place name, the name ‘feta’ is associated with a cheese made in Greece, even though the word ‘fetta’ is etymologically of Italian origin (point 73).

189. The difficulty arises because origin denotes ‘the name of a region, a specific place or, in exceptional cases, a country’ (Article 2(2) of the basic regulation), whereas in this case the name refers to a product or food originating (note that it does not say ‘exclusively originating’) ‘in a region or a specific place’ (Article 2(3) of the basic regulation), since ‘feta’ is linked to a large area of Greece, both historically and at the present time. (156)

190. I should like to make a number of observations aimed at resolving that difficulty:

(a) Article 2(2) applies to direct names and therefore requires a link with an area, which can, exceptionally, be an entire country. By contrast, Article 2(3) governs indirect names and links the product, rather than the name itself, with the geographical location. The two provisions therefore relate to different situations.

(b) It makes no sense to link a geographical area to a traditional name when the provision itself rules out any spatial meaning, which, in most cases, is absent.

(c) Article 2(3) does not refer to ‘a country’, which the applicants claim means that it is impossible for a traditional name to encompass such an area. However, another interpretation is possible, namely that the absence of such a reference means that there is no such maximum territorial limit. To interpret it any other way would preclude areas in a number of States, or even two or more States, from being regarded as a ‘region’. (157) What is important is that the foodstuff, rather than its name, is linked to a defined area, thereby preventing a lack of spatial clarity.

(d) Finally, there appears to be a consensus that the concept of ‘region’ as used by the Community legislature does not encompass the administrative sense of the word. (158)

191. In the light of those observations, it is appropriate to state that ‘feta’, as the name of a cheese originating in a wide, but specific, geographical area fulfils the requirement in question. The size of the area of provenance is immaterial; the decisive factor is that the area has certain features which give rise to the particular characteristics of the cheese.

192. That view does not contradict the approach taken in the *CMA* judgment, in which the Court pointed out, at paragraph 27, that the *Exportur* judgment acknowledged that the protection of geographical indications ‘may, under certain conditions, fall within the protection of industrial and commercial property for the purposes of Article 36 of the Treaty’, before going on to hold that a scheme under which Germany had conferred a quality label on products produced on its territory which fulfilled certain requirements could not be considered as a geographic indication capable of jus-

tification under Article 36 of the Treaty. It cannot be inferred from that passage of case-law that an indication of source is absolutely precluded from covering a whole country; moreover, the dispute in the present case concerns a traditional name with certain specific features which are different to the ones at issue in CMA.

c) The reason for the quality and characteristics of feta and the geographical delimitation of its production, processing and preparation

193. On the subject of traditional names, Article 2(3) of the basic regulation refers to the second indent of Article 2(2)(a), pursuant to which the quality or characteristics of a product must be essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of that product must take place in a defined geographical area. That requirement addresses the need for a clear link between the product and its area of origin, stipulated in the two conditions laid down in the aforementioned indent.

i) Quality attributable to the geographical environment

194. Assuming that it is accepted that 'feta' designates a cheese produced in a specific area, it is still necessary to establish whether those conditions are met with regard to the quality and characteristics of feta.

195. In that assessment, the following may be cited as factors giving rise to the particular nature of the cheese: the climate of the zone of production; the richness and diversity of its vegetation; the milk used in the production of the cheese, which is obtained from ewes and goats reared in accordance with long-established custom; and the fact that the cheese is made by experienced craftsmen using natural straining without applying pressure.

196. The determination of whether there is a link between those elements and the specific characteristics of the product requires a global assessment which takes into account all those factors, paying special attention to the interrelation between them to obtain an overall impression. (159)

197. Accordingly, contrary to the view of the applicants, the quality and characteristics of feta are attributable to the areas of Greece where the cheese is produced, since a basic link has been established between its colour, aroma, texture, taste, ingredients and inherent properties, on the one hand, and the natural environment in which it originates, the culture which supports it, and the traditional production process used in Greece, on the other.

198. That finding is not weakened by the fact that there are certain differences between feta from different regions of Greece or by the lack of uniformity in other aspects, such as the orography and the quality of the pasture, since the common features predominate and the basic catalysts are the same. The delimitation complained of by the applicants actually bolsters that view, in that the territory of the Greek islands has been excluded, with the exception of the nomos of Lesbos. (160) The sheep and goats of Thrace and Thessaly are

very similar to one another but are strikingly different from Scottish, French and Spanish sheep and goats. The same applies to the food they eat, the mountains or meadows where they live, the climate they experience, and all the other conditions which have a bearing on how the cheese comes into being. In that connection, I should like to quote again from Palomar by Italo Calvino, in which the experiences of the hero in a shop in Paris is recounted in masterly fashion: 'behind each cheese there is a different grass under a different sky: fields encrusted with salt deposited every day by the tides of Normandy; fields perfumed with aromas of sun and wind from Provence; there are different cattle with their cowsheds and seasonal moves to new pastures; there are secrets of production handed down over the centuries. This shop is a museum: when visiting it, Mr Palomar feels, behind every object displayed, the presence of the civilisation which gave it shape, as if he were in the Louvre'. (161)

ii) Production, processing and preparation in a defined area

199. The requirement that the entire production process for the product be carried out in a defined area does not extend to the name given to the product, which may be devoid of any geographical connotations.

200. The aim is to preclude the weakening of the link between the product and the environment concerned through the division of the stages of production between different areas or through their association with unspecified places.

201. In the case of feta, there is little doubt that that requirement is fulfilled, since it is laid down in the Greek legislation, albeit with a slight modification in that the region where the cheese is produced is wider in area than the one specified for the sourcing of the raw materials. It is important to note that the area of origin of the milk used is limited, and that the milk must come from indigenous breeds of animals which have been raised using traditional methods and have grazed on pasture in the authorised regions. However, that disparity is not particularly significant, in view of the fact that the basic regulation does not require absolute geographical identity and permits regions which are organised in concentric circles, provided that they are defined with total clarity.

202. The size of the region specified does not appear to be of fundamental importance, since there is nothing to prevent it from covering the whole of the territory of peninsular Greece, notwithstanding that that might give rise to a certain amount of diversity in the product. The essential factor is that the different stages of production take place in a specific area, and that has been shown to be the case in these proceedings.

d) Effects

203. The analysis carried out above confirms that the contested regulation is lawful in so far as it classifies the word 'feta' as a name designating a cheese which originates in a significant part of Greece, has qualities and characteristics attributable essentially or exclusively to the geographical environment, and the production,

processing and preparation of which take place in a defined area.

204. The size of the area gives rise to a number of variations in the feta, but all variants of the cheese are substantially the same in that they have elements in common which reinforce the specific character of feta.

205. It is clear from the foregoing considerations that the name 'feta' is not generic because, as a traditional name, it satisfies the requirements for it to be considered as a designation of origin, eligible for protection throughout the whole territory of the Community on the ground that it is a form of industrial and commercial property. Accordingly, the pleas for annulment put forward in these proceedings must be dismissed and the contested regulation must be held to be valid.

VI – Costs

206. In accordance with Article 69(2) of the Rules of Procedure, since their claims have been unsuccessful and the Commission has applied for costs, the two applicant Member States must be ordered to pay their own costs and those of the Commission. Pursuant to Article 69(4), the States which intervened in the proceedings must bear their own costs.

VII – Conclusion

207. In the light of the foregoing considerations, I propose that the Court:

- (1) dismiss the applications lodged by the Federal Republic of Germany and the Kingdom of Denmark for annulment of Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta'.
- (2) order the applicant States to pay their own costs and those incurred by the Commission.
- (3) declare that the French Republic, the United Kingdom of Great Britain and Northern Ireland and the Hellenic Republic must bear their own costs.

1 – Original language: Spanish.

2 – Case C-317/95 *Canadane Cheese Trading and Kouri* [1997] ECR I-4681.

3 – *Joined Cases C-289/96, C-293/96 and C-299/96 Denmark, Germany and France v Commission* [1999] ECR I-1541, 'Feta'.

4 – Regulation of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10).

5 – *Jerusalem Bible*, 1 Kings 5, 6 and 7, edited by E. Nacar and A. Colunga, version translated directly from the original languages, Desclee de Brouwer, Bilbao, 1975, pp. 371-373. The Bible also refers to certain products of recognised quality which are distinguished by reference to their geographical origin, such as bulls from Bashan, an area in the north of the Jordan Valley where particularly strong, fierce animals were bred (Psalms 22: 13, p. 730); sheet silver from Tarsus and gold from Ophir (Jeremiah, Lamentations 10: 9, p. 1144); and the vineyards of Engedi (Song of Songs 1: 14, p. 914).

6 – Harte Bavendamm, H., 'Geographical Indications and Trademarks: Harmony or Conflict', Symposium on the International Protection of Geographical Indications, Somerset West, South Africa, September 1 and 2, WIPO, Geneva, 1999, p. 59.

7 – References from Cortés Martín, J.M., *La protección de las indicaciones geográficas en el comercio internacional y comunitario*, Ministerio de Agricultura, Pesca y Alimentación, Madrid, 2003, pp. 25 and 26.

8 – Virgil, *The Aeneid*, translation and notes by Javier Echave-Susaeta, Gredos, Madrid, 1977, first reprint. Dodona was a place in Epirus and the site of an oracle to Zeus, where copper vessels were made which were used for making prophecies by interpreting the noise the vessels made when the wind moved them in the branches of the large oak tree in which they hung (Book III, line 465, p. 223).

9 – *Ibid.* Book III, line 484, p. 224.

10 – 'Those who do not know how to recognise Tyrian purple or skins which absorb vermilion from Aquino will not experience a more imminent or certain danger in their bones than the inability to distinguish truth from lies', Horace, *Epistle X; XVII, Ode I, XXI and XXIX.6*, cited by Plaisant, M. and Jacq., F., *Traité de noms et appellations d'origine*, Librairies Techniques, Paris, 1974, p. 1.

11 – Although it appears that in Rome there was a degree of protection under the *Lex Cornelia de Falsis*, which protected traders against the illegal use of their names in the form of an *actio iniuriam* or an *actio doli*. See Franceschelli, R., *Trattato di Diritto Industriale*, Giuffrè, Milan, 1973, p. 77 et seq.

12 – Ferraggio, G.M., 'Denominazione di origine, indicazione di provenienza e d'intorni', *Rivista di Diritto Industriale*, 1990, number 2, p. 224 et seq.

13 – In some instances, the collective mark of a product consisted of the initial of the name of the town where it was made or its coat of arms; for example, the letter A indicated tapestries from Audernarde; the letter B identified goods from Brussels; while two Es back-to-back identified goods from Enghien. See Cortés Martín, J.M., *op. cit.*, p. 27, footnote 8, in which he cites Braun, A., *Nouveau traité des marques de fabrique et de commerce, droit belge, droit international et droit comparé*, Brussels, pp. XXIII-XXIV.

14 – Coiné, H., *Derecho privado europeo*, volume 2, 'El siglo XIX', *Fundación Cultural del Notariado*, Madrid, 1996, pp. 213-214, mentions silk produced in Lyon, linen from Bielfield and scythes from Erzberg in Styria.

15 – As a result of the phylloxera epidemic which attacked vineyards in the second half of the 19th century and the start of the 20th century. In that connection see Girardeu, J.M., 'The Use of Geographical Indications in a Collective Marketing Strategy: The Example of Cognac', Symposium on the International Protection of Geographical Indications, *op. cit.*, p. 70.

16 – That approach can be found in the French Law of 1 August 1905 on the prevention of fraud in the sale of goods and the prevention of the illegal imitation of agricultural products and foodstuffs. However, it was not

until the enactment of laws protecting specific products, such as the Law of 26 July 1925 safeguarding the name ‘Roquefort’, and the horizontal rules governing certain types of goods, such as the Law of 30 July 1935 protecting designations of origin in the wine sector, that such protection became more individualised. In Spain the Estatuto del Vino (Wine Statute), approved by the Royal Decree of 8 September 1932, recognises the autonomy of the designation of origin as a distinguishing sign.

17 – Cervantes, M. de, *Don Quixote*, edited, introduced and with notes by Martín de Riquer, RBA Editores, Barcelona, 1994 (Part One, Chapter IV, p. 128), mentions the wooden tools used in spinning to twist the thread and wind the yarn, which were highly regarded when they were made of beech from the Guadarrama mountains.

18 – *Ibid.*, Part Two, Chapter XXXVIII, p. 905.

19 – *Ibid.*, Part Two, Chapter XLIX, p. 981.

20 – *Ibid.*, Part Two, Chapter XXXII, p. 865.

21 – *Ibid.*, Part Two, Chapter XXX, p. 876.

22 – Vega y Carpio, Lope de, *El caballero de Olmedo*, edited by Francisco Rico, Cátedra, Madrid, 1981, Act I, line 103, p. 111.

23 – Vega y Carpio, Lope de, *Peribáñez y el comendador de Ocaña*, edited by Juan M^a Marín, Cátedra, Madrid, 1979, Act I, Scene XIII, line 677, p. 89.

24 – *Ibid.*, Act I, Scene XIII, line 739, p. 91.

25 – Shakespeare, W., *Hamlet, Prince of Denmark*, Act I, Scene IV.

26 – *Ibid.*, Act V, Scene II.

27 – Proust, M., *À la recherche du temps perdu*, Volume III, *Sodome et Gomorrhe*, p. 330.

28 – *Ibid.*, Volume III, *La prisonnière*, p. 542.

29 – Carpentier, A., *La consagración de la primavera, Siglo XXI de España Editores*, 7th edition, Madrid, 1979, Part III, Chapter 18, p. 219.

30 – *Ibid.*, Part VII, Chapter 35, p. 463.

31 – *Ibid.*, Part VII, Chapter 36, p. 480. In the same novel, one of the characters, Teresa, is described as possessing the unusual ability to detect ‘trickery or pilfering in the purchase of caviar, the origin of foie-gras, and the authenticity of wines from great producers and great vintages’. The same woman rebukes her cook with the words, ‘You know that my compatriots know nothing about milésimes because they couldn’t care less whether they drink coca-cola or pepsi-cola, but don’t go provoking me with your Mouton-Rothschild bottles filled with cheap Galician red wine. And the next time you try to pass off a second-rate champagne as a Dom Perignon, I’ll send you back to France ...’ (Part III, Chapter 18, p. 219).

32 – Maroño Gargallo, M.M., *La protección jurídica de las denominaciones de origen en los Derechos español y comunitario*, Marcial Pons, Madrid, 2002, p. 176.

33 – ‘... the effect of industrial property rights is to confer an exclusive right in relation to an entire market, the latter being defined as the territory within which there is free movement of goods ... when the market expands and becomes supranational, but the monopoly created by the industrial property rights does not adapt

to the new environment, conflict inevitably arises ...’, Bercovitz, A., ‘La propiedad industrial e intelectual en el Derecho comunitario’, in the collective work *Tratado de Derecho Comunitario Europeo*, Volume II, Civitas, Madrid, 1986, p. 532.

34 – Article III-154 of the Treaty establishing a European Constitution (OJ 2004 C 310, p. 1) also cites that as one of the grounds justifying prohibitions or restrictions on imports, exports or goods in transit.

35 – OJ, English Special Edition 1970(I), p. 17.

36 – OJ 1979 L 33, p. 1. Similar wording is used in Article 18(2) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29), which repealed Directive 79/112.

37 – It will all depend on which definition prevails: the traditional one which covers products whose characteristics are essentially attributable to natural factors in the area of origin, or a wider definition which does not take into account those particular features. In that way, the retention of designations of origin for other goods is not precluded. See Pellicer, R., ‘Primeros pasos de una política comunitaria de defensa de la calidad de los productos alimenticios. Reglamento sobre la “especificidad” y Reglamento sobre denominaciones de origen e indicaciones geográficas’, *Gaceta Jurídica*, B-83 and B-84, May 1993, pp. 13 and 15, respectively; in particular, B-84 p. 16.

38 – OJ 1992 L 208, p. 1.

39 – Council Regulation (EC) No 692/2003 of 8 April 2003 amending Regulation No 2081/92 (OJ 2003 L 99, p. 1) is aimed, albeit tentatively, in that direction, stating that, ‘[t]o meet the expectations of some producers, it has also proved necessary to extend the list of agricultural products referred to in Annex II to Regulation (EEC) No 2081/92. It is also appropriate to extend the list referred to in Annex I to the said Regulation to include foodstuffs resulting from products in Annex I to the Treaty which have only undergone a slight transformation’ (first recital).

40 – OJ, English Special Edition 1959-1962, p. 123.

41 – OJ 1999 L 179, p. 1. Its predecessors were Regulation (EEC) No 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organisation of the market in wine (OJ, English Special Edition 1970(I), p. 234) and Regulation (EEC) No 817/70 of the Council of 28 April 1970 laying down special provisions relating to quality wines produced in specified regions (OJ, English Special Edition 1970(I), p. 252). Those regulations were replaced, respectively, by Council Regulations (EEC) No 337/79 and (EEC) No 338/79, both of 5 February 1979 (OJ 1979 L 54, pp. 1 and 48), which were in turn replaced by Council Regulations (EEC) No 822/87 and (EEC) No 823/87, both of 16 March 1987 (OJ 1987 L 84, pp. 1 and 59), which were repealed by Regulation No 1493/1999, currently in force.

42 – In accordance with Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on

the definition, description and presentation of spirit drinks (OJ 1989 L 160, p. 1), and with Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatised wines, aromatised wine-based drinks and aromatised wine-product cocktails (OJ 1991 L 149, p. 1), geographical designations are reserved exclusively for the products concerned, by reference to the area where 'they acquired their character and definitive qualities' (Articles 5(3)(b) and 6(2)(b), respectively).

43 – In accordance with Article 2(1)(a) of that directive, its aim was to protect purchasers against any deception or confusion arising as a result of the labelling of goods. The equivalent in the wine sector was Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13), which was repealed by Regulation No 1493/1999.

44 – Salignon, G., 'La jurisprudence et la réglementation communautaires relatives à la protection des appellations d'origine, des dénominations géographiques et des indications de provenance', *Revue du Marché Unique Européen*, No 4, 1994, p. 107.

45 – The Commission had announced that objective in 1985 in the Green Paper on the future of European agriculture (Bull. EC 7/8-1985, point 1.2.1 et seq., and COM(85) 333 final), and in the Communication on the completion of the internal market: Community legislation on food products (Bull. EC 11-1985, point 2.1.18 and COM(85) 603 final).

46 – Particularly in Case 120/78 *Rewe-Zentral* [1979] ECR 649, 'Cassis de Dijon', which I will discuss later.

47 – That proposal was set out in a memorandum sent to the Council by the French Government in January 1988 and entitled 'Contribution to the completion of the Internal Market in foodstuffs', in which, in addition to proposing that the protection of designations of origin for foodstuffs should be harmonised, urged the Commission to continue drawing up vertical harmonising measures (particularly for basic products), to introduce at Community level a system of recognition of speciality foods forming part of the culinary traditions of each Member State, and to reach an agreement on quality certification. See Brouwer, O., 'Community Protection of Geographical Indications and Specific Character as a Means of Enhancing Foodstuffs Quality', *Common Market Law Review*, No 28-1991, p. 618.

48 – For example, the Commission interpretative communication on the names under which food products are sold (OJ 1989 C 271, p. 2).

49 – The Parliament adopted a number of resolutions, most notably the Resolution of 28 April 1989 proposing the implementation in the Community of a system of protection for designations of origin, although it was confined to cheeses.

50 – On the same date, the Council adopted Regulation (EEC) No 2082/92 on certificates of specific character for agricultural products and foodstuffs (OJ 1992 L 208, p. 9), whose objective is also to implement a sys-

tem for distinguishing between products on the market so that certain producers may increase their sales or improve their margins, by creating a traditional system of registration and labelling for products which have recognised specific features but which, unlike products covered by designations of origin and geographical indications, have no link, in terms of production or manufacture, to a particular place. That system is to exist in conjunction with national rules on certification.

51 – Maroño Gargallo, M.M., *op. cit.*, p. 217.

52 – Cited in footnote 2, point 36. See also point 42, which sets out the consequences of registration under the basic regulation.

53 – That wording contains a definition of the concept similar to the one traditionally laid down in international agreements and national legislation. The wording of Article 2(2) echoes the definition set out in Article 2(1) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958, revised at Stockholm on 14 July 1967, UN Treaty Series, Vol. 923, No 13172, p. 205. It is also similar to the definition set out in Article 79 of Spanish Law 25/1970 of 2 December 1970 (BOE No 291), approving the Statute on Vines, Wine and Alcohol, and to the definition in Article 22 of Law 24/2003 of 10 July 2003 (BOE No 165) on Vines and Wine, which repealed the former law.

54 – Some writers are of the opinion that the distinction is one of degree only, rather than of substance. See, for example, Sordelli, L., 'Indicazioni geografiche e denominazioni di origine nella disciplina comunitaria', *Diritto Industriale*, 1994, p. 837 et seq. Other writers assert that the distinction is not clear, such as López Benítez, M., *Las denominaciones de origen*, Cedecs, Córdoba, 1996, p. 85. The same view was expressed by the Economic and Social Committee in the Opinion on the proposal for a Council Regulation (EEC) on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1991 C 269, p. 62).

55 – Minutes No 7290/92 of 12 June 1992 of the Special Agricultural Committee state that 'the Commission and the Council declare that, for the purposes of Article 2(2)(a) and (b), the Grand Duchy of Luxembourg will be regarded as an exceptional case. The Council and the Commission confirm that Article 2 of the Regulation covers the Luxembourg national trade mark'. See Pellicer, R., *op. cit.*, B-84, pp. 16 and 17.

56 – As the Economic and Social Committee suggested at the relevant time in the Opinion on the proposal for a regulation, referred to above.

57 – Advocate General Jacobs raised that possibility in the Opinion in Case C-325/00 *Commission v Germany* [2002] ECR I-9977, 'CMA', stating at point 40 that the definition applies essentially where the Member State in question 'is particularly small (e.g. Luxembourg) and, perhaps, where registration is sought for a whole Member State in respect of a particular product the quality or reputation of which is attributable to that Member State'.

58 – Under the French law of 6 July 1966, the name of a country may, without limitation, constitute a designation of origin. Furthermore, there are no limits as to area in the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is included in Annex 1C to the Agreement Establishing the World Trade Organisation, approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1). Article 22 defines geographical indications ‘which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin’. The Lisbon Agreement of 1958 provides a similar definition with regard to designations of origin.

59 – That is clear from the definition of ‘specified region’ contained in Annex VI.A of Regulation No 1493/1999, which is restricted to ‘a wine-growing area or a combination of wine-growing areas’. More specifically, the third recital in the preamble to Regulation No 1576/89 states that ‘... Community rules should reserve, for certain territories among which certain countries may, by way of exception, appear, the use of geographical designations referring to them ...’, while Article 5(3) of that regulation provides for a specific derogation in favour of Luxembourg, with regard to the *marque nationale luxembourgeoise*.

60 – Cortés Martín, J.M., *op. cit.*, p. 351. In that connection, it has been correctly noted that the likelihood of proving that relationship ‘diminishes in proportion to the size of the area to which the name relates’ (point 8 of the Opinion delivered by Advocate General La Pergola in the *Feta* case).

61 – Commission Regulation (EC) No 2325/1997 of 24 November 1997 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation No 2081/92 (OJ 1997 L 322, p. 33).

62 – Commission Regulation (EC) No 1778/2001 of 7 September 2001 supplementing the Annex to Regulation No 1107/96 (OJ 2001 L 240, p. 6).

63 – In point 45 of the Opinion he delivered in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee* [1999] ECR I-2779, Advocate General Cosmas referred to raw materials, the soil and the climate in the region as natural factors, and a concentration of similar businesses in the same region, specialisation in the manufacture of certain products and quality maintenance at specified levels as human factors.

64 – Indeed, many mineral waters (in which natural factors predominate) have been registered as designations of origin, whereas bread, confectionery and pastry products have been registered as geographical indications. It is important to bear in mind that Regulation No 692/2003 excluded mineral and spring waters from the scope of the basic regulation and consequently, 10

years after its adoption, such names will no longer appear in the register (Article 2).

65 – Fernández Novoa, C., *La protección internacional de las denominaciones geográficas de los productos*, Tecnos, Madrid, 1970, p. 3.

66 – In the Proposal for the regulation (OJ C 30, p. 11), such names were considered as geographical indications. In fact, some writers have taken the view that the failure to provide for the extension of the scope of geographical indications is discriminatory. See Beier, F.K., and Knaak, R., ‘The Protection of Direct and Indirect Geographical Indications of Source in Germany and The European Community’, *International Review of Industrial Property and Copyright Law*, vol. 25-1994, p. 32; Tilmann, W., ‘EG-Schutz für Geographische Herkunftsangaben’, *Gewerblicher Rechtsschutz und Urheberrecht*, 1992, p. 833; and Jiménez Blanco, P., *Las denominaciones de origen en el Derecho del comercio internacional*, Eurolex, Madrid, 1996, p. 52.

67 – Annex VI to Regulation No 1493/1999 provides that the appellations ‘muscadet’, ‘blanquette’, ‘vinho verde’, ‘cava’ and ‘manzanilla’ are recognised as the names of the respective specified regions demarcated and regulated by the relevant Member States before 1 March 1986. Similarly, Regulation No 1576/89 protects the names ‘pacharán’, ‘korn’, ‘kornbrand’ and ‘jäger-tee’.

68 – That derogation was included in the basic regulation in response to an application from the United Kingdom to register *Stilton*, a cheese whose production began in the English town of the same name but later moved to a nearby town while retaining the name by which it was traditionally known.

69 – Case 12/74 *Commission v Germany* [1975] ECR 181, ‘Sekt-Weinbrand’.

70 – Fernández Novoa, C., *op. cit.*, p. 39; see also, Mattered, A., *El mercado único, sus reglas y su funcionamiento*, Civitas, Madrid, 1991, p. 447.

71 – Governed by Council Regulation (EC) No 40/94 of 20 December 1993 (OJ 1994 L 11, p. 1).

72 – A new wording of that article is contained in Council Regulation (EC) No 806/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority) (OJ 2003 L 122, p. 1).

73 – The details of that procedure are set out in the Commission communication to traders involved with designations of origin and geographical indications for agricultural products and foodstuffs concerning the simplified procedure for Community registration as laid down in Article 17 of Regulation No 2081/92 (OJ 1993 C 273, p. 4). The absence of a procedure under which individuals affected by a registration were able to lodge an objection was strongly criticised by academic writers, including Cortés Martín, *op. cit.*, pp. 386 and 387. In accordance with Recital 13 in the preamble to Regulation No 692/2003, that shortcoming was among the reasons for the abolition of the simplified procedure.

74 – Decision setting up a scientific committee for designations of origin, geographical indications and certificates of specific character (OJ 1993 L 13, p. 16), amended by Decision 94/437/EC of 14 June 1994 (OJ 1994 L 180, p. 47) and Decision 97/656/EC of 2 October 1997 (OJ 1997 L 277, p. 30).

75 – Regulation 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).

76 – Commission Regulations (EC) No 1263/96 of 1 July 1996 (OJ 1996 L 163, p. 19), No 123/97 of 23 January 1997 (OJ 1997 L 22, p. 19), No 1065/97 of 12 June 1997 (OJ 1997 L 156, p. 5), No 134/98 of 20 January 1998 (OJ 1998 L 15, p. 6), No 644/98 of 20 March 1998 (OJ 1998 L 87, p. 8), No 1549/98 of 17 July 1998 (OJ 1998 L 202, p. 25), No 83/1999 of 13 January 1999 (OJ 1999 L 8, p. 17), No 590/1999 of 18 March 1999 (OJ 1999 L 74, p. 8), No 1070/1999 of 25 May 1999 (OJ 1999 L 130, p. 18), No 2317/1999 of 29 October 1999 (OJ 1999 280, p. 66), No 813/2000 of 17 April 2000 (OJ 2000 L 100, p. 5), No 2703/2000 of 11 December 2000 (OJ 2000 L 311, p. 25), No 913/2001 of 10 May 2001 (OJ 2001 L 129, p. 8), No 1347/2001 of 28 June 2001 (OJ 2001 L 182, p. 3), and No 1660/2003 of 19 September 2003 (OJ 2003 L 234, p. 10). In addition, Regulation No 2325/97 and No 1778/2001, cited above, and Regulation No 1829/2002, which is contested in these proceedings.

77 – Case 8/74 [1974] ECR 837.

78 – This case is known as ‘Cassis de Dijon’ after the French fruit liqueur with an alcohol content of between 15° and 20° which is sold freely in France, and which it was attempted to market in Germany where a minimum alcohol content of 25° was required.

79 – Case 113/80 Commission v Ireland [1981] ECR 1625, paragraph 7; Case 95/81 Commission v Italy [1982] ECR 2187, paragraphs 20 and 21; and Joined Cases C-321/94 to C-324/94 Pistre and Others [1997] ECR I-2343, paragraph 52.

80 – Case C-205/89 Commission v Greece [1991] ECR I-1361, paragraph 9.

81 – For example, Beier, F.-K., ‘Propiedad industrial y libre circulación de mercancías en el mercado interior y en el comercio con terceros Estados’, *Revista General de Derecho*, Number 549, June 1990, p. 4521 and footnote 31 on p. 4519. See also Bercovitz, A., op. cit., p. 520.

82 – Revised at Stockholm on 14 July 1967, UN Treaty Series, Vol. 828, No 11851, p. 305.

83 – Case C-47/90 [1992] ECR I-3669.

84 – Case C-3/91 [1992] ECR I-5529.

85 – Case C-388/95 [2000] ECR I-3123.

86 – Case C-469/00 [2003] ECR I-5053, paragraph 49.

87 – Case C-108/01 [2003] ECR I-5121, paragraph 64.

88 – Academic writers criticised strongly the fact that a dual connection was also required for indications of origin. See, inter alia, Beier, F.-K., ‘La nécessité de protéger les indications de provenance et les appellations d’origine dans le Marché Commun. En marge de

l’Arret Sekt/Weinbrand de la Cour de Justice des Communautés européennes du 20 février 1975’, *Propriété Industrielle*, WIPO/BIRPI, 1977, p. 160.

89 – For a specific reference to ‘reputation’, see, for example, Case 102/77 Hoffmann-La Roche [1978] ECR 1139, paragraph 7, and Joined Cases C-71/94, C-72/94 and C-73/94 Eurim-Pharm [1996] ECR I-3603, paragraph 31 (both of which dealt with trade marks), in addition to Exportur, paragraph 28, and Case C-306/93 SMW Winzersekt [1994] ECR I-5555, paragraph 25.

90 – Case 144/81 [1982] ECR 2853.

91 – Case C-312/98 [2000] ECR I

to a reference for a preliminary ruling which arose in a dispute about the labelling of beer.

92 – Case C-99/99 [2000] ECR I-11535.

93 – Commission Regulation (EC) No 2815/98 of 22 December 1998 (OJ 1998 L 349, p. 56).

94 – Case C-216/01 [2003] ECR I-13617.

95 – Case C-87/97 [1999] ECR I-1301. The case concerned a dispute involving the names ‘Cambozola’, a cheese imported into Italy from another Member State where it is legally produced, and ‘Gorgonzola’, an Italian cheese whose designation of origin is recorded in the Community register. The Court held that, although in outward appearance the two foods are not dissimilar, it would seem reasonable to conclude that a protected name is indeed evoked where they contain the same number of syllables of which the last two are the same, with the result that there is a phonetic and visual similarity between the two terms.

96 – In view of the fact that the product specifications for designations of origin are not published, the two judgments also examined whether those specifications could be relied on against third parties.

97 – Joined Cases C-129/97 and C-130/97 [1998] ECR I

had registered the name ‘Époisses de Bourgogne’ in accordance with the simplified procedure and then applied for amendment so that the name ‘Époisses’ alone was protected.

98 – Case C-66/00 [2002] ECR I-5917.

99 – Pursuant to Commission Regulation (EC) No 590/1999 of 18 March 1999 supplementing the Annex to Regulation No 1107/96 (OJ 1999 L 74, p. 8).

100 – Case C-269/99 [2001] ECR I-9517.

101 – Advocate General Alber took a similar approach in the Opinions he delivered in both cases (points 92 and 97, respectively).

102 – See the factual background set out in points 22 to 47 of the ‘Feta’ judgment, which I will look at in detail below.

103 – FEK B 8.

104 – A basic summary of the questionnaire is attached as Annex 1 to the Commission’s defence. Its indicative nature is referred to in the 17th recital in the preamble to Regulation No 1829/2002, which notes that ‘the absence of a specific legislative framework in almost all the Member States, along with the very general definition of the term “Feta” in the combined customs nomenclature, sometimes leads to rather approximate estimates, and cross-comparisons of responses produce

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statistically divergent data. Indeed, many Member States find it difficult to distinguish between domestic output and re-exports, which may unduly inflate the figures’.

105 – From 1981 to 1998, the Netherlands also had legislation governing feta production. Austria reserves the term to Greek products, in accordance with the Convention concluded with Greece on 20 June 1972 pursuant to the Agreement between the two countries of 5 June 1970 on the protection of indications of origin and the names of agricultural, artisanal and industrial products, (BGBl. Nos 378/1972 and 379/1972; Österreichisches Patentblatt No 11/1972 of 15 November 1972).

106 – The representative of France stated at the hearing that, in that country, production was 10 325 tonnes in 2003 and 11 200 tonnes in 2004.

107 – Recital 19 in the preamble to Regulation No 1829/2002 states that a broad assessment ‘has proved inadequate in some cases and has even produced anomalous results in others: since it is impossible to take account of existing stocks, quantities re-exported and other factors, the calculation has resulted in theoretically negative consumption in some Member States’.

108 – At the hearing it was confirmed that labels alluding to Greece are used by German and Danish producers, a fact which is also referred to in the documents which the Commission attached to its defence.

109 – The full text of the opinion is attached as Annex 3 to the defence of the Commission. The findings are set out in recitals 30 to 32 in the preamble to Regulation No 1829/2002.

110 – However, the view in academic legal circles was that the conflict could be resolved only by compromise. Fluir, A., ‘Feta als geschützte Ursprungsbezeichnung – eine Leidensgeschichte’, *European Law Reporter*, 2002, No 11, p. 437.

111 – Ministerial Order No 15294/1987 of the Ministries of Finance and Agriculture (FEK B 347).

112 – FEK B 892.

113 – FEK B 663.

114 – FEK B 667.

115 – The Court of First Instance has also been seised of a number of similar actions contesting Regulation No 1829/2002, brought by Alpenhain-Camembert-Werk and Others (T-370/02), by the Confédération générale des producteurs de lait de brebis et des industriels de Roquefort (T-381/02) and by Arla Foods and Others (T-397/02). In the Order of 6 July 2004 ([2004] ECR II-2097) in the first of the aforementioned cases, the Court of First Instance allowed the objection submitted by the Commission and declared the action inadmissible on the ground that the contested act did not individually concern the applicants, German undertakings involved in the production of cheese marketed as ‘feta’. The other two cases are pending judgment.

116 – Rules of Procedure of the Court of Justice, Codified Version of 19 June 1991 (OJ 1991 L 176, p. 7), amended on a number of occasions (most recent official publication in OJ 2003 C 193, p. 1).

117 – Regulation No 1 of the Council of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59).

118 – Forwarding of the agenda, proposed measures, and other working documents at least 14 days before the date of the meeting is provided for in Article 3 of the standard rules of procedure approved by Council Decision 1999/468/EC (OJ 2001 C 38, p. 3). It is also important to bear in mind Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23), and Regulation No 806/2003, cited above.

119 – I took a similar approach in the Opinion in Joined Cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and 219/00 P Aalborg Portland and Others [2004] ECR I-123, pointing out that an act containing a decision on a file may be annulled only ‘if it is found that, if the proper procedural routes had been scrupulously followed, the outcome could have been more advantageous for the person concerned or if, precisely because of the procedural defect, it is impossible to ascertain whether the decision would have been different’. I went on to state that ‘defects in the procedure do not have a life of their own in isolation from the substance of the case. If a decision taken in the wake of a defective procedure is annulled because, owing to the defects in the procedure leading to its adoption, it is wrong in substance, the decision is annulled because it is incorrect in substance, not because of the procedural defect. The defect in form assumes an independent existence only when, because it occurred, it is impossible to form an opinion about the decision which was adopted’.

120 – The summarised minutes of the meeting record that no agreement was reached, since the proposal received 47 votes in favour, 23 against and 17 abstentions. That document, together with the other minutes of the Committee on Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, can be found at www.europa.eu.int/comm/agriculture/minco/regco.

121 – Case C-263/95 [1998] ECR I-441.

122 – Case C-249/02 [2004] ECR I-10717.

123 – Case 131/86 United Kingdom v Council [1988] ECR 905, paragraph 37.

124 – Case 18/57 Nold v High Authority [1959] ECR 41 and subsequent cases.

125 – Case C-350/88 Delacre and Others v Commission [1990] ECR I-395 and Case C-22/94 Irish Farmers Association and Others [1997] ECR I-1809.

126 – That is also the order followed in Denmark’s application, while Germany’s application deals first of all with the traditional character of the name and then goes on to assert that it is generic.

127 – I have taken that example from the *Diccionario de la Real Academia Española*, 22nd edition.

128 – However, as I observed in point 28 of the Opinion in *Canadane Cheese and Kouri*, the Court has held the following to be generic names: vinegar (Case

193/80 Commission v Italy [1981] ECR 3019); geneva (Case 182/84 Miro [1985] ECR 3731); beer (Case 178/84 Commission v Germany [1987] ECR 1227); pasta (Case 407/85 3Glocken and Kritzinger [1988] ECR 4233 and Case 90/86 Zoni [1988] ECR 4285); yoghurt (Case 298/87 Smanor [1988] ECR 4489); Edam cheese (Case 286/86 Deserbais [1988] ECR 4907); cheeses (Case C-210/89 Commission v Italy [1990] ECR I-3697 and Case C-196/89 Nespola and Crippa [1990] ECR I-3647); meat products ('Fleischwaren') (Case C-269/89 Bonfait [1990] ECR I-4169); and bread (Case 130/80 Kelderman [1981] ECR 527, Case C-17/93 Van der Veldt [1994] ECR I-3537, and Case C-358/95 Morellato [1997] ECR I-1431).

129 – Opinion of Advocate General Saggio in Case C-448/98 Guimont [2000] ECR I-10663, point 11.

130 – Unlike the rules with regard to trade marks, the basic regulation does not set out grounds for generalisation, which has led to a number of criticisms. See Lobato García-Miján, L., 'La protección de las Denominaciones de origen: estudio del reglamento (CEE) 2081/92', Estudios de Derecho Mercantil en homenaje al profesor Manuel Brosseta Pont, Volume II, Tirant lo Blanch, Valencia, 1995, p. 1985 et seq. On the subject of popular usage, see Fernández Novoa, C., op. cit., p. 42.

131 – For example, in the English case *Wine Products Ltd. & others v Mackenzie & Co. Ltd & Others*, the High Court (Chancery Division) gave judgment on 31 July 1967 authorising Australian and South African producers to use on the English market the name 'Jerez' (Sherry), a Spanish town, provided that they added the adjective Australian or South African ('Australian Sherry' or 'South African Sherry'), holding that to permit producers of sherry to prevent the use of those expressions would be unjust since they had already been aware of such use (see the Opinion of Advocate General Warner in *Sekt-Weinbrand*). In French case-law, the judgment of the Cour d'Appel de Montpellier of 25 August 1984 on the designations 'Jijona' and 'Alicante' gave rise to much discussion when it was examined in the light of the findings of the Court in the judgment in *Exportur* which was delivered in response to a reference for a preliminary ruling in that case.

132 – I would like to qualify the statement made by Advocate General Léger in point 40 of the Opinion in *Bigi*, to the effect that, '[s]ince the assessment of whether a name is generic in terms of the Regulation falls within the remit of the Commission, I take the view that it is not for the Court to take on the task of the Commission on that question. The role of the Court consists simply in reviewing the legality of decisions adopted by the Commission (or the Council) on the subject, in accordance with Article 230 EC'. While I do not dispute the second part of that statement, I believe that where an act is annulled following an assessment by the Court as to whether a particular name is generic, the Court has not taken on the task of the Commission or usurped its powers.

133 – The words are taken from Advocate General Léger, at point 50 of the Opinion in *Bigi*.

134 – The fact that there are two methods addresses the need for a broad-based approach owing to the different levels of protection in the Member States.

135 – Paragraphs 22 to 28 of the *Feta* judgment describe the steps taken by the Commission to draw up a draft non-exhaustive indicative list of names which are precluded from registration because they are regarded as generic.

136 – López Escudero, M., in 'Parmigiano, feta, epoisse y otros manjares en Luxemburgo: las denominaciones geográficas ante el TJCE', *Une Communauté de droit: Festschrift für Gil Carlos Rodríguez Iglesias*, BMW-Berliner Wissenschafts-Verlag, 2003, p. 409 et seq., directs harsh criticism towards the fact that to determine whether or not the name of a product is generic there must be an exclusive connection with a particular area.

137 – For example, Fernández Novoa, C., op. cit., p. 46, and, in German academic legal circles, Bussman, K., 'Herkunftsangabe oder Gattungsbezeichnung', *Gewerblicher Rechtsschutz Und Urheberrecht*, 1965, p. 281 et seq.

138 – The procedure leading to registration in the Annex to Commission Regulation (EC) No 2400/96 of 17 December 1996 on the entry of certain names in the 'Register of protected designation of origin and protected geographical indications' provided for in Regulation No 2081/92 (OJ 1996 L 327, p. 11), amended on numerous occasions.

139 – See, in that regard, Cortés Martín, J.M., op. cit., p. 381.

140 – See, in that regard, Cortés Martín, J.M., op. cit., footnote 1206, p. 381.

141 – Fernández Novoa, C., op. cit., p. 43.

142 – Rochard, D., "'Rillettes du Mans'", "Rillettes de la Sarthe": dénominations génériques ou IGP? C'est le juge qui va déguster!", *Revue de Droit Rural*, No 251, 1997, p. 175.

143 – Rochard, D., op. cit., refers specifically to the Stresa Convention, concluded on 1 June 1951, which authorises the signatories thereto to use the names in Annex II, provided that the rules on production are observed and the country of production is specified. However, the names in Annex I may be used only by producers in the relevant geographical area. It should be noted that Denmark was a signatory to the convention, which does not apply to *feta*, but later withdrew, while Greece has never been a signatory.

144 – See point 19 of the Opinion in *Canadane Cheese Trading and Kouri*.

145 – On the subject of international agreements, see, for example, the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, done at Luxembourg on 25 June 2001 (OJ 2004 L 304, p. 39), particularly Article 37, Annex VI and the joint declaration on the two; the Economic Partnership, Political Coordination and Cooperation Agreement

between the European Community and its Member States, of the one part, and the United Mexican States, of the other part, concluded in Brussels on 8 December 1997 (OJ 2000 L 276, p. 45), particularly Article 12; and the Interim Agreement on trade and trade-related matters between the European Economic Community and the European Coal and Steel Community, of the one part, and the Republic of Bulgaria, of the other part, concluded in Brussels on 8 March 1993 (OJ 1993 L 323, p. 2).

146 – Homer, *The Odyssey*, Book IX, translated by E.V. Rieu, Penguin Books, 1946, p. 145.

147 – *Ibid.*, p. 142: ‘the Cyclopes, a fierce, uncivilized people ... have no assemblies for the making of laws, nor any settled customs, but live in hollow caverns in the mountain heights, where each man is law-giver to his children and his wives, and nobody cares a jot for his neighbours’; p. 145: a ‘being of colossal strength and ferocity, to whom the law of god and man meant nothing’.

148 – *Ibid.*, Book XX, p. 306.

149 – Homer, *The Iliad*, Book XI, translated by E.V. Rieu, Penguin Books, 1950, p. 214: the lady Hecamede, the ‘comely attendant’ of Nestor and Patroclus, ‘mixed them the pottage with Pramnian wine ... grating into it some goat’s milk cheese with a bronze grater ...’.

150 – See O’Connor, B. and Kirieeva, I., ‘What’s in a name?: The Feta cheese saga’, *International trade law and regulation*, Vol. 9, 2003, p. 117 et seq.

151 – That approach is in accordance with Article 6 of the Lisbon Agreement and contrasts with Article 24(6) of the Agreement on Trade-Related Aspects of Intellectual Property Rights which gives precedence to the situation of the name in areas of consumption.

152 – Article 3 of the basic regulation provides that ‘... [t]o 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 ...’.

153 – Although Denmark disputes the opinion, it has not put forward any convincing reasons why the opinion should be discredited.

154 – Putting aside earlier doubts, the usefulness of opinion polls was acknowledged in the judgments in *Windsurfing Chiemsee*, paragraph 53, and in *Case C-210/96 Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 37. Although those judgments refer to that method in the context of trade marks and the guidance is directed towards national courts, the case-law can be extrapolated to the field of designations of origin and the actions of the Community institutions.

155 – In accordance with the judgment in *Joined Cases C-267/95 and C-268/95 Merck and Beecham* [1996] ECR I-6285, which dealt specifically with patents, the specific subject-matter of industrial and commercial property in that connection ‘is, in particular, in order to reward the creative effort of the inventor, to guarantee that the patentee has the exclusive right to use an inven-

tion with a view to manufacturing industrial products and putting them into circulation for the first time, either directly or by the grant of licences to third parties, as well as the right to oppose infringements’ (paragraph 30).

156 – The Greek provisions and the product specification attached to the application for entry in the Community Register permit production in Macedonia, Thrace, Epirus, Thessaly, Central Greece, Peloponnese – nearly all of mainland Greece – and the nomos (an administrative district) of Lesbos.

157 – It is important to bear in mind the evolution of the European Union, which has progressively expanded, on a number of occasions to admit small States. The phenomenon will continue and, perhaps, the protection conferred on a product in an area of the current territory of the Community will extend to areas in the new States.

158 – Advocate General La Pergola accepted that view in the Opinion in *Feta* (point 8).

159 – I noted as much in point 75 of my Opinion in *Canadane Cheese Trading and Kouri*, pointing out that otherwise it ‘would preclude protection for many geographical names because modern production techniques enable almost any product to be made anywhere’.

160 – In other words, it does not even cover the whole of that island.

161 – Calvino, I., Palomar, ed. *Giulio Einaudi*, Turin, 1983, p. 85.