Typical and traditional productions:
Rural effect and agro-industrial problems
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The impact of Community protection measures introduced by Regulation (EEC) N.2081/92 and by Regulation (EEC) N.2082/92

SUMMARY

The paper describes the main contents of the Regulation (EEC) N.2081/92 and the Regulation (EEC) N.2082/92 and it considers the most relevant issues related to the protection granted to the producers and to consumers by them.
The procedures in order to register the products as DPO and IGP product, the inspection structures and the effects of protection in third countries have been considered as well.

1. Introduction

Regulation (EEC) No 2081/92 and Regulation (EEC) No 2082/92 of 14 July 1992 are only two of the instruments available to the European Commission for its quality policy relating to agricultural products and foodstuffs.
Another relevant act is Regulation (EEC) No 2092/91 on organic farming: its purpose is to create a harmonised framework of standards for the production, labelling and monitoring of agricultural products and foodstuffs designated as "organic".
These rules are signs of the radical change in the common agricultural policy, from a rationale of quantity, based on indiscriminate boosting of output, to a rationale of quality, with a view to better balance between demand and output.
The two Regulations mentioned above concerning respectively the protection of geographical indications and designations of origin and the issuing of certificates of specific character are part of the quality approach. They are, of course, simply legal instruments. Their impact will depend on a number of factors such as how widely the arrangements are actually applied, how they are perceived by consumers, or whether the Member States provide the necessary back-up in terms of information and co-ordination. Only through these factors can a typically legal instrument such as

a Community Regulation become a means of determining major economic consequences under the common agricultural policy.

2. Regulation (EEC) No 2081/92

Regulation (EEC) No 2081/92 provides for two separate classes of protected geographical name: designations of origin, and geographical indications.
The protected designation of origin (or PDO) is 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.

A close link with the area of origin is therefore required. For the designation of origin, the key words in the definition of the required relationship between the product name and the geographical area denoted are "essentially or exclusively".
The protected geographical indication (or PGI) is the name of a region, a specific place or, in exceptional cases, a country used to describe an agricultural product or 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.

The difference between the PDO and the PGI is in the second indent. For the PGI, it is sufficient that one stage of the manufacture of the product should be closely linked to the geographical environment, although it must still be a product originating in the region whose name it bears, and it must have a reputation that can be attributed to its geographical origin.
Prior to the adoption of Regulation (EEC) 2081/92, there were basically two approaches in Europe to protecting the names of food products. The system in France and the countries of southern Europe consisted in determining very precise conditions of production, formalised in a decree at national level and guaranteeing the link with the area of origin. Respect for strict conditions of production and control guaranteed the authenticity and originality of the product.
The system in Germany and the northern countries was mainly based on case law, in the form of judgments handed down by the courts on cases brought before them under competition law. Rather than determining the optimal qualities of a product linked to a geographical environment, the important issue under this system was to avoid misleading the consumer. The protection of designations of origin was thus simply an indirect effect of consumer protection.
In the French-type system, it is expected that the consumer will be aware of the link between the designation of the product and the geographical area; in the German-type system the product's reputation is based solely on the fact that it is from a specific region. The designation of origin is not related to clearly defined specifications.
The definition of geographical designations was also under discussion in the GATT framework.

In practice, for the countries where there was previously no system of designations of origin, it is difficult to explain the importance of a precise description of the product: some of the German applications for registration seem to be saying not much more than "this product name should be protected because of its excellent reputation." In the countries which did already have a system of protected designations of origin, the problem is to make it clear that the PGI is a new category, different from the PDO but not inferior; a system meeting different requirements and characterised by a more tenuous link between the product name and the geographical area, but conferring the same protection as the designation of origin.

The weaker link of the PGI product with the place of production increases the importance of the specifications. If a product does not manage to fulfil all the necessary conditions for designation of origin, but more than meets the requirements for a geographical indication, strict and accurate specifications guarantee that the quality level of the product will be maintained.

It is very important to define the relevant geographical area carefully and clearly. The link between the product and the PDO is so close, because of such factors as weather, geology, and expertise, that the area should not be too wide, otherwise it would be difficult to prove that the same product cannot be obtained elsewhere, which is an implicit criterion for registration. For PGI products, it is equally clear that the area should not be too wide, or varied, as the product's reputation is assessed in relation to the whole area.

3. Registration procedures

The "normal" registration procedure laid down in Regulation (EEC) No 2081/92 is broadly as follows: a group of producers lodges an application for registration with the Member State; the competent national department passes the application on to the Commission. If the Commission considers the application justified, it publishes the specifications in the Official Journal of the European Communities when it considers that the designation fulfils the conditions for protection; objections may be presented within six months of publication; if no objections are received (or if the objections received are not admissible), the Commission formally enters the name in the "Register of protected designations of origin and protected geographical indications".

To date, this "normal" procedure has been followed in only 44 cases, relating to applications from six Member States (15 from Portugal, ten from France, six from Denmark, five from the Netherlands, four from the United Kingdom and four from Spain). Four names have been registered, five have been published in the Official Journal and are still at the stage where objections can be made, and the others are being considered by the Commission.

Clearly, the "normal" procedure has not been extensively used; the Member States have preferred to apply the "simplified" procedure, which was introduced into the Regulation at the explicit request of certain Member States solely for designations that were already legally protected nationally, or, in the Member States where there was no national system of protection, for names established by usage.

The difference between the number of applications under the normal procedure and those under the simplified procedure is surprisingly great: 1566 applications have been lodged, of which 540 were withdrawn, 417 have been accepted and registered, and 589 are still under consideration. Clearly, the Member States began by concentrating on requests for registration of names already

protected at national level, but it is also possible that a major factor in the choice of this procedure was the concern to avoid objections.

4. Transitional national protection

For the simplified procedure, Article 17 of the Regulation provides that "Member States may maintain national protection of the names communicated [...] until such time as a decision on registration has been taken." This means that there is no interruption in protection for a name legally protected at national level, which continues to be so protected until Community protection takes over as a result of registration. However, it also means that national protection of a name cannot be maintained if the application for its registration is rejected.
Regulation (EC) No 535/97 of 17 March 1997 also introduced a period of transitional protection which the Member State may grant to names for which it has applied for registration under the normal procedure. This transitional protection applies only until a decision has been reached on registration.
It is also possible for the Member States to provide for a short adjustment period to deal with any internal disputes caused by the application for registration.
These rules apply in exceptional circumstances, and their purpose is to safeguard names that are already legally used at national level to market products, by granting producers a fairly long period in which to comply with Community regulations.

5. Names which have become generic

To understand the scope of Regulation (EEC) No 2081/92, it should be borne in mind that it applies only to geographical names or certain traditional non-geographical names.
This means that indications of the origin of the product that refer simply to the place of production or manufacture without a link with its features, invented names or geographical names that have become generic are not protected by the rules, and continue to be used as at present.
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 foodstuff. Thus a geographical name should have passed into common parlance and characterise a category of identical products that do not necessarily originate in the region indicated by the name.
It is often difficult to prove that a name has become generic. The fact that a product is manufactured outside the area of origin does not necessarily imply that the name has become generic.

6. The scope of protection

The protection afforded by Regulation (EEC) No 2081/92 to registered names is of unprecedented scope. Registration gives producers an exclusive right to use the registered name, which is a genuine industrial property right.

However, the purpose of this property right over PDOs and PGIs is to reserve to the owner the economic benefit of the collective reputation acquired through the use of the name in trade. Similarly, the specific function of the PDO and the PGI is to show that the product bearing the name originates with the collective owner.

It should be made clear that "collective ownership" is not confined to the group of producers that made the original application; it extends to all in the area concerned who manufacture the product in accordance with all the specifications. Collective owners of a PDO or PGI (who own the name, not the product) are entitled to require that producers situated outside the geographical area or failing to comply with the specifications should be prohibited from using the name.

Evidence of the exclusive right may be given by adding the letters PDO or PGI (or the traditional equivalent, e.g. *denominación de origen, denominazione di origine controllata, appellation d'origine contrôlée*, etc.) next to the registered name.

The scope of protection is very wide.

(a) The Regulation prohibits any direct or indirect commercial use of a name registered for products not covered by the registration in so far as those products are comparable to the products registered under the name. Where the products are not comparable, the prohibition applies only in so far as using the name exploits the reputation of the protected name.

(b) It also prohibits any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in" "imitation" or similar. This prohibition is very important; it goes beyond what is required to avoid misleading the consumer. It is further evidence that producers have been granted genuine rights that cannot be usurped, even indirectly.

To make it easier to adapt to the new legal situation, the Regulation provides for transitional arrangements that were originally to remain in force until 25 July 1997. Member States where the use of a geographical indication accompanied by those expressions ("style", "type", etc.) was authorised could maintain such authorisation provided that:

- the products were on the market under the relevant name before 23 July 1987, and
- the labelling clearly indicated the true origin of the product.

Regulation (EC) No 535/97 changed the time limit for maintaining national protection, which may now continue for five years from publication of registration (i.e. each registration).

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

(d) Finally, it prohibits any other practice liable to mislead the public as to the true origin of the product. This point was deliberately worded in general terms, to fill any gaps left by the more specific prohibitions.

The effects described in the above paragraphs are the legal effects of protecting the name; but as mentioned at the beginning of this article, the practical consequences will result from the voluntary behaviour of producers, and possibly from action by the Member States and judgements by national courts. As the first names were registered in 1996, it is still too early to assess the consequences.

7. Inspection structures

Regulation (EEC) No 2081/92 would be of little use without effective inspection structures.
The function of the inspection structures is to ensure that products bearing a protected name meet the requirements laid down in the specifications.
The Regulation explains in some detail that inspection structures (a general term) may comprise one or more designated inspection authorities and/or private bodies approved for that purpose by the Member State. Consequently, it is up to the Member State to decide whether inspection is to be carried out by the private sector, or whether it should be kept within the civil service. National governments will probably base their choice on the content of Article 10(2), or on evidence that the designated authorities or approved private bodies:

– offer adequate guarantees of objectivity and impartiality with regard to all producers subject to their control, and
– have permanently at their disposal the qualified staff and resources necessary to carry out inspection of agricultural products.

Obviously, an outside body, for example a highly specialised laboratory or technician, can always be called upon for certain inspections. Even an approved private body may have recourse to such outside checks, but the inspection structure continues to be responsible vis-à-vis the Member State for all inspections.
Regulation (EEC) 2081/92 introduces a reference to standard EN 45011 of 26 June 1989. Of all the European voluntary product-certification standards, this one seems to be the most suitable in view of the provisions of the Regulation, although it should be borne in mind that inspection of a food product is extremely complex compared with the inspection of more standardised products.
All private inspection bodies must fulfil the requirements laid down in the standard from 1 January 1998. Under the EN 45000 series of European standards, certification is the act by which a third party, independent of the parties concerned, attests with a sufficient degree of confidence that a given product, process or service complies with a given standard or technical rule.
Confirmation by an accreditation body of compliance by the inspection body with standard EN 45011 is not required; the Member State may use its judgment. Similarly, the Member State may withdraw approval if the conditions under which it was granted cease to apply.

8. The effects of protection in third countries

There are two aspects to this question: bilateral agreements, and the agreements concluded in the framework of the Uruguay Round.
Under bilateral agreements, it is provided that Community rules (i.e. reservation of the name, and protection against all practices liable to mislead the consumer) apply to the third country's designations of origin as long as that country:

– imposes conditions identical or equivalent to those imposed by the Community;
– has inspection arrangements equivalent to those of the Community;
– grants protection equivalent to that afforded in the Community to corresponding agricultural products or foodstuffs from the Community.

As the Commission now has exclusive competence, by virtue of Regulation (EEC) No 2081/92, for the protection of geographical indications and designations of origin, bilateral agreements on this matter must be reached at Community level. For example, Switzerland has for some time been hoping to sign an agreement with the Community on the protection of names.
Article 22 of the GATT/WTO Agreement on trade-related aspects of intellectual property rights (TRIPs Agreement) covers the protection of geographical indications, and defines the geographical indication in virtually the same terms as the PGI is defined in Regulation (EEC) No 2081/92.
Parties to the TRIPs Agreement must grant the minimum level of protection it lays down.
The TRIPs Agreement is certainly a major step forward, in that it establishes a common definition of the geographical indication (equivalent to our own definitions), and in that it involves an obligation for the parties to the Agreement to set up the necessary legal means for its application.
However, the protection resulting from the TRIPs Agreement is not identical to that resulting from Article 13 of Regulation (EEC) 2081/92. Article 22 of the Agreement provides for a clear distinction between, on the one hand, the obligations of the States parties to the Agreement, and, on the other hand, the rights of the private parties (i.e. the producers) that benefit from it. The States must introduce a system ensuring that producers can argue before their national courts that a geographical indication has been usurped. It is therefore up to the producers themselves to bring cases before the courts.
All the parties concerned, including the Community, are at present engaged in examining the application and interpretation of this Agreement.

9. Certificates of specific character

There are products that are absolutely typical, but at the same time have no link with a given geographical area; their special character consists in the mode of production, which is protected by Regulation (EEC) No 2082/92.
Specific character means the feature or set of features which distinguishes an agricultural product or foodstuff clearly from other similar products or foodstuffs belonging to the same category.
The rules on certificates of specific character relate to products characterised by a traditional composition or mode of production. These are products with special features that set them apart from other products.
For the name of the product to be protected, it must be specific in itself, or express the specific character of the product. The basic idea is the need to distinguish a specific product from the other products on the market, but this time because of its special character rather than its origin.
It follows that any producer who complies fully with the specifications is entitled to use the name, with no geographical restrictions.
Unlike Regulation (EEC) No 2081/92, Regulation (EEC) No 2082/92 does not confer an exclusive right to use the name of the product; but it reserves the use of the name, with the words "guaranteed traditional speciality" (GTS) and the appropriate Community symbol or logo, for products meeting the specifications.
Unfortunately, only four Member States have sent applications for entry in the register of certificates of specific character. Seven of the eleven applications received have been published in the Official Journal. For one of them, the application to register the name "mozzarella", the period

for objections is now closed; the applicant Member State (Italy) and the Member States that made objections are now holding consultations, in accordance with the procedure laid down in Article 9 of Regulation (EEC) No 2081/92.

10. Information campaign

As the PDO and PGI arrangements replace arrangements for designations in certain Member States, and are totally new in others, the Commission decided to launch an information campaign on Regulations (EEC) No 2081/92 and No 2082/92.
The campaign was planned in three stages, the first aimed at producers and processors, the second at the distribution sector, and the third at consumers. It takes the form of articles in specialised journals, press conferences in the Member States, participation in trade fairs and other food industry events, the distribution of information and measures targeting the public at large.
The campaign is now entering the third stage, aimed at consumers; the Member States have already been informed that in late 1997 and early 1998 the Commission is intending to organise a major event, probably an exhibition of PDO and PGI products in the main railway stations, with a special train running between European capitals.
The success of this campaign is vitally important to proper awareness of the new arrangements. The aim is therefore mainly to encourage producers and processors to use the systems laid down in the Regulations, which are not compulsory and do not involve any financial support, and to stimulate demand for the products concerned by informing distributors and consumers of the existence, meaning and advantages of the indications and designations.

11. Conclusions

The Commission is responsible for ensuring that the Member States apply the rules correctly, and for proposing improvements if necessary. All decisions are subject to the opinion of a Committee made up of representatives of the Member States.
The Regulations in question are an illustration of how the common agricultural policy is now concentrating increasingly on enhancing quality, in view of the importance of this aspect for both producers and consumers.
Quality is defined by international standard ISO 8402 as “the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs”.
The challenge for the future is thus to develop these protection systems so that they form an extensive but coherent whole, bearing in mind that they are mainly intended for products on niche markets, and for products obtained through traditional methods.
Better quality, better guarantees for consumers, better opportunities for producers to realise the added value they expect as a reward for their efforts on quality: if these aims are to be attained, Member States and especially producers must continue to demonstrate good sense and consistency in the management of the arrangements.