JUDGMENT OF THE COURT (Grand Chamber)

25 October 2005 *

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.-D. 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,

* Languages of the case: German and Danish.

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.-M. Rouchaud-Joët and S. 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. Lõhmus 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 generic 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 confusion 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-367/95 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.**

[Signatures]