

# update

## EU Food Update November 28, 2005

### European Court Upholds 'Feta' as a Protected Designation of Origin for Greece

In a judgment published on October 25, 2005<sup>1</sup>, the European Court of Justice (ECJ) upheld the decision of the European Commission to register the name 'feta' (Φέτα) as a protected designation of origin for a white cheese soaked in brine, originating in Greece. Denmark, France, Germany, and the UK had brought an action for annulment of Commission Regulation No 1829/2002 of October 14, 2002 registering 'feta' as a protected designation of origin. The four countries had argued that 'feta' is a generic name for the salty, crumbly white cheese, rather than a name denoting Greek origin.

#### Legal Framework for Protected Designations of Origin

A 1992 EU Regulation<sup>2</sup> established a system for protecting geographical indications and designations of origin for agricultural products and foods. A designation of origin is:

- the name of a region, a specific place or, in exceptional cases, a country, used to describe the product or food;
- originating in that region, specific place or country, and

---

<sup>1</sup> C-465/02 and C-466/02 of October 25, 2005, Federal Republic of Germany v Commission.

<sup>2</sup> Regulation 2081/92 of July 14, 1992 OJ 1992 L 208, p. 1.

- 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.

The 'feta' issue arose out of the Regulation's provision dealing with non-geographical names -- there is no location in Greece known as 'feta.'<sup>3</sup> If a traditional non-geographical name that designates an agricultural product or a food as originating in a region or place fulfills certain criteria, that name also qualifies as a protected designation of origin. As with geographical names, non-geographical names must connote "quality or characteristics ... 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."<sup>4</sup> However, according to the same Regulation,<sup>5</sup> "names that have become generic may not be registered." A "name that has become generic" is one that relates to the place or the region where this product or food was originally produced or marketed but that has become the common name of that product or food.

## Background

By the time the European Commission published a Regulation, No 1829/2002, which included 'feta' in the register of protected designations of origin, the issue was already controversial in the EU.<sup>6</sup> The Commission's Regulation granted 'feta' Community-wide protection as reserved exclusively for cheese originating in Greece based on an analysis that the relevant criteria were met. To be registered as a protected designation of origin, a traditional name such as 'feta' that is not the name of a region, place or country must refer to an agricultural product or a food from a defined geographical environment with specific natural and human factors capable of conferring on that product or a food its specific characteristics. According to the Commission, in the case of "feta", these conditions were met, and the name 'feta' had not become the common name and, therefore, generic. In the Commission's view, the legal prerequisites for a protected designation of origin were fulfilled. Germany and Denmark, supported by France and the United Kingdom, disagreed and applied to the ECJ for the annulment of the registration of 'feta' as such a designation for Greece.

## The ECJ Ruling

The ECJ's October 25, 2005 judgment rejected the claims of Germany and Denmark and upheld Commission Regulation 1829/2002 registering 'feta.' The ECJ ruled that the quality and characteristics of 'feta' cheese are essentially or exclusively due to a particular geographical environment, as required by

<sup>3</sup> The term 'feta' is derived from the Italian word 'fetta', meaning 'slice', which entered the Greek language in the 17th century.

<sup>4</sup> Article 2(3) of Regulation No 2081/92 of July 14, 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs OJ 1992 L 208, p. 1

<sup>5</sup> The third subparagraph of Article 3(1) of Regulation 2081/92 provides that, '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.'

<sup>6</sup> 'Feta' had been registered first, in 1996, at the request of Greece. However, in 1999 that registration was annulled by the Court of Justice following actions brought by Denmark, France and Germany, on the grounds that the Commission had not taken any account of the fact that that name had been used for a considerable time in certain Member States other than Greece.

the general regulation 2081/92 on protected designations of origin. The judgment also confirms that feta cheese must come from goats or ewes. The Court referred to “geomorphology” of the relevant area is defined by the Greek legislation,<sup>7</sup> that is, the mountainous or semi-mountainous nature of the terrain; the climate (namely, mild winters, hot summers and significant sunshine); and the botanical characteristics, namely the typical vegetation of the Balkan medium mountain range. In sum, the Greek legislation established that the relevant area possesses natural features that are both homogeneous and sufficiently distinctive from others.

According to Article 1 of the Greek Ministerial Order, the milk used for the manufacture of ‘feta’ cheese must come exclusively from the defined geographical area comprised of Macedonia, Thrace, Epirus, Thessaly, Central Greece, Peloponnese and the department (Nomos) of Lesbos. The Court concluded that areas of Greece excluded from the defined area lack the natural features shared by the defined area. Therefore, the geographical area in question was not, as Germany and Denmark claimed, defined in an artificial manner. The ECJ emphasized that the milk used for manufacturing ‘feta’ cheese must come exclusively from the defined geographical area. Taking the position that the areas excluded from the defined geographical area were not negligible, the ECJ rejected the claim by Germany and Denmark that Greece had sought to enable its entire territory to use ‘feta.’

The Court also rejected the claim that ‘feta’ is a generic name and that the Commission failed to take due account of such factors as the manufacture of feta in Member States other than Greece, the consumption of feta outside Greece, consumer perception, or other Member States’ legislation. The Court’s findings included the following:

- More than 85% of Community consumption of feta, per capita and per year takes place in Greece which suggests the consumption of feta is concentrated in Greece.
- The majority of consumers in Greece believe that ‘feta’ carries a geographical and not a generic connotation. In Denmark the majority of consumers believe the name is generic. The Court lacked conclusive evidence regarding six other Member States.
- In Member States other than Greece, feta-type cheese is commonly marketed with labels suggesting Greek cultural traditions and civilization. Consumers there appear to perceive feta as associated with Greece, even if produced elsewhere. The ECJ therefore saw a likelihood of consumer confusion: the link between the name ‘feta’ and Greece is such that use of ‘feta’ by non-Greek producers suggests a sales strategy capitalizing on the reputation of the original product and creating a risk of consumer confusion.
- As for national legislation, only Denmark and Greece 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.

The ECJ concluded that ‘feta’ is not generic in nature and dismissed the action.

## Conclusion

The name ‘feta’ is a protected designation of origin that enjoys EU-wide protection and that, within the EU, is reserved exclusively for cheese originating in Greece. This ECJ ruling constitutes an important precedent that has a significant impact on non-Greek cheese producers who must change the name of their products since ‘feta’ will from now on be reserved exclusively for Greek producers. It remains to be

<sup>7</sup> Article 1 of Greek Ministerial Order No 313025/1994 of January 11, 1994.

seen whether the case will influence other non-geographic protected name designations, whether in the EU or elsewhere.

Significantly, the EU Agriculture and Rural Development Commissioner, Mariann Fischer Boel, stated that the ruling set an example for global trade talks where denominations of origin, including those of wines, are often the subject of discussion and international negotiations.

\* \* \* \* \*

For further information, please contact:

**Jacqueline Maily**

[jmailly@hhlaw.com](mailto:jmailly@hhlaw.com)

+ 32 2 505 09 19

*Brussels, Belgium*

**Linda R. Horton**

[lrhorton@hhlaw.com](mailto:lrhorton@hhlaw.com)

+ 32 2 505 09 31 or +1 202 637 6795

*Brussels, Belgium and  
Washington, DC*

**Guglielmo Adinolfi**

[gadinolfi@hhlaw.com](mailto:gadinolfi@hhlaw.com)

+ 32 2 505 09 51

*Brussels, Belgium*

**Elefteria Nearchou**

[enearchoui@hhlaw.com](mailto:enearchoui@hhlaw.com)

+ 32 2 505 09 55

*Brussels, Belgium*

**Gary J. Kushner**

[gjkushner@hhlaw.com](mailto:gjkushner@hhlaw.com)

+ 1 202 637 58 56

*Washington D.C.*

[www.hhlaw.com](http://www.hhlaw.com)

*This Update is for informational purposes only and is not intended as basis for decisions in specific situations. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.*