

**Fourth Minnesota Padova Conference on
Food, Agriculture, and the Environment**

Proceedings of a Conference Sponsored by
University of Minnesota
Center for International Food and Agricultural Policy

Universita degli Studi di Padova
Dipartimento Territorio e Sistemi Agro-forestali

Regione Veneto

Ente di Sviluppo Agricolo

**SESSION IV: THE QUALITY OF AGRICULTURAL PRODUCTS
AND HUMAN HEALTH**

PAPER 4: QUALITY POLICY OF THE E.U.

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1. **Competence of the European Union: Foundations and Limits**

It should first be said, as a premise, that the European Union was born as a result of the fact that certain Western European States renounced some of the rights which they held within the scope of their State Sovereignty and surrendered such rights to organisations which are endowed with supranational powers, such as ECSC (European Coal and Steel Community), EAEC (European Atomic Energy Community) and EEC (European Economic Community). These States were initially six (Italy, The Federal Republic of Germany, France, Belgium, Luxembourg, the Netherlands). Later, in the course of the following years, they were joined by the United Kingdom of Great Britain and Northern Ireland, Ireland, Denmark, Greece, Spain and Portugal; as in January 1995 Austria, Sweden, Norway and Finland also become members if they ratify the Treaty signed in Corfù on June 24, 1993 (1).

This transfer of competence was achieved by employing the typical tools of international law, namely by treaties signed by Representatives of the Governments of each of the founder, or joining, States and ratified by their National Parliament.

The first, the Treaty of Paris, established the ECSC and became effective on January 1, 1952. This was followed on March 25, 1957 by the Treaties of Rome establishing the EAEC and the EEC with effect from January 1, 1958.

Even today, these treaties represent the foundation of the Community competence, although in time they were partially modified or integrated with other treaties, in particular those relating to the entry of new Member States, the Single Act, which became effective on July

1,1987 and the Treaty of Maastricht, effective November 1, 1993 which, by the expression "European Union" embraces the three Communities.

The treaty subject of our present interest is the one which established the EEC (renamed simply EC - European Community - by the Treaty of Maastricht) and subsequent modifications because it is in this treaty which we find provisions that are relevant to our topic: I am referring in particular to Articles 100 and 100A and Articles 39 and 43 (2).

I should like to stress the point that I spoke of "transfer of competence" from Member States to the European Union and not of a delegation of powers: the difference is substantial because the transfer implies that the State loses the competence handed over, or transferred, and the Union acquires and exercises it, in its own behalf, whilst a delegation simply implies the possibility on the part of the Union to exercise the delegated powers, for and on behalf of the delegating State which maintains title to such powers.

In the first case, the Member State cannot legislate on issues which have now become the competence of the Union, from the moment when the latter begins to exercise its powers by issuing specific regulations.

Should the Member State continue to pass national legislation in matters of exclusive competence of the European Union, a contrast would be created between the national law and the European law, contrast which could only be overcome by upholding the priority principle of the latter over the former.

It should, however, be noted that whilst in the case of certain sectors Member States have fully transferred their powers the three Communities which make up the European Union, in other sectors the transfer was partial and consequently this gives rise to continue competition between the national powers and the Community's ones. In such cases the principle to be applied is that of subsidiarity, that is to say: the Community institutions intervene to resolve problems concerning the Union as a whole, while the Member States regulate on problems of national interest.

A specific case of total transfer of competence is that of the agricultural policy, which is now the exclusive competence of the

Community. Member States can only exercise the power of implementing the policy and legislations of the Community .

On the contrary, the policy relating to product quality as such was not transferred to the Communities. The European Union has this competence only in the measure required to pursue specific objectives.

It is in this manner that the E C has followed a policy of quality only to approach national laws on this issue, and avoid the possibility that any divergence existing between such laws might become an obstacle to the free circulation of products within the territory of the European Union and result in a hinderance to the common market which must function as a single market. In this case the Community acted on the basis of the Articles 100 and 100A of the CE Treaty.

In other cases, on the other hand, the Community applied its own policy on quality as a prevailing or complementary instrument to its agricultural policy, on the basis, this time, of Article 43 taking into account the objectives of Article 39.

2. The concept of product quality

Truthfully, in speaking of "policy of quality" it has been taken for granted that the term "quality" corresponds to a well defined and precise concept.

In effect, we could speak of quality products thinking of products which have particularly valuable properties or, simply, of common products which satisfy the requirements of public health protection.

Obviously, however, we cannot assume that in the classification of quality products we may include items whose only claim is to safety and healthiness. All foodstuff must not present a risk to public health, but quality is something which goes beyond safety and hygiene. Yet, it would be unreasonable to classify as "of quality" only those item which satisfy these requirements or which are considered, by public opinion, particularly sophisticated and which are, usually, rather expensive. Let us consider, just to name a few examples, such things as champagne, caviar, smoked salmon, lobster and so on.....

In the absence of a precise definition of what is intended by "quality", taking the Community legislation as a whole and in the light of certain communications on the subject of foodstuff issued by the Commission, it would seem that the term "quality" may be applied to

products suitable to satisfy the exigencies and expectations of the consumer. To implement a policy of quality does not, therefore, mean prescribing specific rules for the composition and manufacture of any one item but rather support products which possess the features they claim to have.

By virtue of the principle of subsidiarity the Community restricts its activities to the prescription of uniform rules which are valid for the whole Community, for the sole purpose of guaranteeing a high level of safeguard upon public health and, at the same time, a correct and adequate supply of information to the consumer regarding the nature, the features and possibly the origin of foodstuff on sale to the public. With regard to the composition, the contents, of the products - the so called "recipes" - Member States are free, if they so wish, to issue rules in consideration of local taste and tradition.

Nevertheless, on the basis of a fundamental principle established by the European Court of Justice in a famous judgement known as the "Cassis de Dijon", Member States are in any case obliged to admit to their territory foodstuff legally produced and marketed in other Member States (3).

This principle, known as the principle of "mutual recognition", was perfected by the Court following certain disputes among which, the most famous, those concerning the German legislation on beer, or the Italian on vinegar or pasta (4).

As regards the case of the beer, for example, the German Government on the one hand reserved the denomination "beer" for fermented beverages manufactured exclusively with malted barley, hops, yeast and water and on the other hand prohibited the marketing of any type of beer containing additives.

The Court held as legitimate the intent of German law makers to give the consumer who attributes special qualities to beer manufactured with particular raw materials the opportunity to make their choice on the basis of such belief, but the Court also ruled that the same opportunity of choice could be safeguarded by clear labels listing the contents of the beverage, without prohibiting the marketing of beer manufactured in other Member Countries with ingredients and additives permitted by their own regulations.

A similar problem was dealt with by an identical analysis applied in the case of Italian legislation prescribing the compulsory use of durum wheat flour for the manufacture of pasta or reserving the denomination "aceto" (vinegar) only to the product derived from wine.

3. The policy of quality as an instrument of common agricultural policy

In July 1988, by means of a document entitled "The future of the rural world", the Commission announced that the stagnation in demand and the need to curtail the surplus of agricultural products make it no longer possible to look to the future of agriculture in terms of "quantity". It stated that, on the contrary, it was expedient to promote a policy of quality at Community level, by adopting, in particular, quality trademarks and identified origin denominations, destined to enhance the particular characteristics of certain products as well as to protect the consumer against dishonest practices and imitations.

It is for this reason that on July 14, 1992 the Council of the European Community adopted these two regulations :

A. One, number 2081/92, concerning "the protection of geographical indications and designations of origin for agricultural products and foodstuff" (5);

B. The other one, number 2082/92 concerning the "certificates of specific character for agricultural products and foodstuff" (6).

A) The regulation concerning the protection of geographical indications and designation of origin

With this regulation the European Community has introduced some common rules to protect products having certain characteristics by reason of their geographical origin.

The geographical indications protected are not a new feature. They have been subject of an international agreement signed in Lisbon in 1958.

However, not many States in Europe had a special legislation on this matter: only Latin Countries, with France in first position, used to have protected geographical indications. Think, for example, of "Champagne", "Cognac", several types of cheese like "Roquefort" or "Camembert" de Normandie in France, and of "Prosciutto di Parma"

(Parma ham) or "Prosciutto di San Daniele" (San Daniele ham) or "Formaggio parmigiano" (Parmesan cheese) or "Pecorino romano".

With a common regulation, the Community intended to extend this practice. In fact it noticed that in recent years consumers tend to attach greater importance to specific agricultural products or foodstuff which have an identifiable geographical origin.

The principal rules introduced by this European regulation are the follows:

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 foodstuff which is originating in that region, specific place or country, and possess the quality or characteristics essentially or exclusively due to a particular geographical environment. This includes the natural and human factors, and the production, processing and preparation of which take place in the particular 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 foodstuff which is also originating in that region, specific place or country, and possesses a specific quality, reputation or other characteristics attributable , even if not essentially, to this particular geographical area.

To be eligible to use a protected designation of origin (PDO) or a protected geographical indication (PGI) an agricultural product or foodstuff must comply with a specification.

The product specification must include at least:

- a) the name of the agricultural product or foodstuff, including the designation of origin or the geographical indication;
- b) a description of the agricultural product or foodstuff including the raw materials, if appropriate, and principal physical, chemical, microbiological and/or organoleptic characteristics of the product or the foodstuff;
- c) the definition of the geographical area;
- d) a description of the method for obtaining the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods;
- e) details bearing out the link with the geographical environment or the geographical origin;
- f) details of the inspection structures.

To enjoy protection in every Member State, geographical indications and designations of origin must be registered at Community level. Of course an adequate system of control has to be established by the Member State to verify that the products in question comply with the rules of the Regulation.

Registered names shall be protected against:

- a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration, in so far as those products are comparable to the products registered under that name or, insofar as using the name exploits the reputation of the protected name;
- b) any misuse, imitation or evocation, even if the true origin of the products 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;
- c) any other 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 products concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- d) any other practice liable to mislead the public as to the true origin of the product.

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.

Concerning products or foodstuffs from a third country - say the USA for exemple - the Regulation provides that even an agricultural product or foodstuff not produced in the European Union, may be registered as a PDO or PGI (Protected designation of origin or Protected geographical indication) if the third country is able to give guarantees identical or equivalent to those required by the EC Regulation for the European products, even from an inspection point of view and if the third country concerned is prepared to provide protection equivalent to that available in the Community to corresponding Community agricultural products.

The examined Regulation concerning the protection of geographical indications or designations of origin covers practically all agricultural products, except wines for which there is a special Community legislation providing for a higher level of protection.

Other foodstuff covered by this Regulation are specifically indicated in annex to the same Regulation. These are:

- Beer,
- Mineral water,
- Beverages made from plant extracts,
- Confectionery, bread, pastry, cakes, biscuits and other baker's products

B. The regulation on certificates of specific character for agricultural products and foodstuff

This Regulation lays down rules under which a Community certificate of specific character may be obtained for agricultural products intended for human consumption and for some foodstuff specifically indicated in annex to the regulation these are:

- Beer,
- Chocolate and other food preparations containing cocoa,
- Confectionery, bread, pastry, cakes, biscuits and other baker's products,
- Pasta, whether or not cooked or stuffed,
- Pre-cooked meals,
- Prepared condiment sauces,
- Soups or broths,
- Beverages made from plant extracts,
- Ice-cream and sorbets.

For the purpose of this Regulation, "specific character" means the feature or set of features which distinguish an agricultural product or a foodstuff clearly from other similar products or foodstuffs belonging to the same category.

The recognition of the specific character of a product is given by the Community by the means of a special register.

In order to appear in the register an agricultural product or foodstuff must either be produced using a traditional composition or a traditional method of production and/or processing.

To be registered the name must be specific in itself or express the specific character of the agricultural product or the foodstuff.

Registration shall not be permitted in the case of an agricultural product or foodstuff, the specific character of which is due to its provenant or geographical origin (in this case it is applying the specific Regulation concerning the geographical indications or designations of origin) or only to the application of a technological innovation.

In order to qualify for a certificate of specific character an agricultural product or foodstuff must comply with a product specification which includes at least:

- the name;
- a description of the method of production, including the nature and characteristics of the raw material and/or ingredients used;
- a description of the characteristics of the agricultural product or the foodstuff giving its main physical, chemical, microbiological and/or organoleptic characteristics which relate to the specific character.

Registered names shall be protected against any practice liable to mislead the public including, *inter alia*, practices suggesting that the agricultural product or foodstuff is covered by a certificate of specific character issued by the Community.

The agricultural products coming from a third country can be registered on condition that the third country is able to provide identical or equivalent guarantees and assure the same protection to corresponding agricultural products of the Community and covered by a Community certificate of specific character.

CONCLUSIONS

The Community foodstuffs legislation has as principal objective to ensure a high level of public health protection and an adequate information to the consumer about the nature, characteristics and, where appropriate, origin of products.

The quality policy aims to encourage the diversification of agricultural production with a dual purpose:

- to ensure consumer access to the great variety of the Community's foodstuff;
- to encrease the incomes of farmers.

#

NOTES

(1)

Only Norway has not ratified the Treaty. So this country is not member of the European Union.

(2) - Art. 100

The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.

The European Parliament and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation.

- Art. 100a

1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 8a. The Council shall, acting by a qualified majority on a proposal from the Commission in cooperation with the European Parliament and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection.

4. If, after the adoption of a harmonization measure by the Council acting by a qualified majority, a Member State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it shall notify the Commission of these provisions.

The Commission shall confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

The harmonization measures referred to above shall, in appropriate cases, include a safeguard clause authorizing the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Community control procedure.

- Art.39

1. The objectives of the common agricultural policy shall be:

(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

(a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;

(b) the need to effect the appropriate adjustments by degrees;

(c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

- Art.43

1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.

2. Having taken into account the work of the conference provided for in paragraph 1, after consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, the Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in Article 40 (2), and for implementing the measures specified in this Title.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Title.

The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting unanimously during the first two stages and by a qualified majority thereafter, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

3. The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organisations by the common organisation provided for in Article 40 (2) if:

(a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;

(b) such an organisation ensures conditions for trade within the Community similar to those existing in a national market.

4. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Community.

(3)

Case 120/78, *Rewe Zentral AG c/Bundesmonopolverwaltung für Brauntwein*, Judgement of 29/2/1979, European Court Reports (ECR) 1979, p.649

(4)

Case 788/79, *Gilli and Andres*, Judgement of 26/6/1980, ECR 1980, p.2071 and Case 193/80, *Commissione c/ Repubblica Italiana*, Judgement of 9/12/1981, ECR 1981, p.3019; Case 178/84, *Commissione c/ Repubblica federale di Germania*, Judgement of 12/3/1987, ECR 1987, p.1227; Cases 407/85 and 90/86, *Drei Glocken GmbH and Kritzinger c/ USL Centro-Sud and Provincia autonoma di Bolzano*, Judgement of 14/7/1988, ECR 1988 p.4233

(5)

Official Journal of the European Communities (OJEC) L 280, 1992, p.1

(6)

Official Journal of the European Communities L 208, 1992, p.9