

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(90) 2414 final

Brussels, 21 January 1991

Proposal for a

COUNCIL REGULATION (EEC)

on certificates of specific character for foodstuffs

(presented by the Commission)

EXPLANATORY MEMORANDUM

General

1.1. This proposal is the outcome of the policy decisions taken by the Commission with regard to food quality.

In its programme for 1990 it undertook to present "proposals for regulations on quality policy (designations of origin and protection of regional designations, introduction of quality labels)".

The proposed draft corresponds to the undertaking concerning quality labels. Its purpose is to promote food quality and thereby to:

- contribute towards rural development under the common agricultural policy by maintaining certain specific forms of production;
- provide food producers with the instruments they will need in the context of the Single Market to be able to certify the specific character of their products;
- protect and inform consumers seeking products whose quality, as regards method of production or special characteristics, is guaranteed.

1.2. In some Member States food quality assurance schemes already exist. In most cases they are voluntary schemes set up by producers or groups wishing to enhance the value of their products in the consumer's eyes. They certify:

- that a foodstuff presents specific characteristics which are laid down in a product specification, or
- that a foodstuff, without presenting any specificity, is produced with particular care to ensure its conformity with the rules or standards.

1.3. The attached proposal outlines a Community scheme enabling food producers to certify the specific character of their products and defines the systems of inspection associated with the scheme.

The provisions

2.1. The Community certificate of specific character is recognition by all Member States that a foodstuff has specific characteristics (Article 2). Such recognition is sanctioned by the entry of the foodstuff in a register kept by the Commission (Article 3).

The criterion of specific character means that the foodstuff effectively possesses specific characteristics due to its raw materials or production methods which distinguish it from similar foodstuffs and justify its additional market value. It is not sufficient for such foodstuffs simply to meet the criteria laid down in the general standards applicable to them (Article 4). Specific character is one of the features distinguishing the Community certificate of specific character from certification of conformity with standards.

2.2. The Community registration procedure is fairly transparent and should help prevent a proliferation of certificates of specific character where there is no express justification for them. It is subject to the following main rules:

- registration must be applied for by a group of producers (Article 5) which has drawn up a product specification for the product in question (Article 6);
- the substance of the application is examined at national level by the competent authority of the Member State (Article 7);
- publication of the application in the Official Journal of the European Communities allows any natural or legal person, through the national authorities, to object to registration (Article 8).

The Commission's role is merely to examine the formal aspects of the dossiers submitted, then attend to their registration and final publication if no objections are raised. If objections are raised, they may be resolved by an amicable procedure; the Commission intervenes only in the last resort if no agreement is reached between the Member States (Article 9). Its decision constitutes legal protection at Community level.

This procedure must also be followed if the original applicant wants to change the product specification (Article 10).

2.3. After publication in the Official Journal, the trade description in the product specification must be reserved for foodstuffs which meet the criteria of the specification. However, to safeguard established rights, this exclusive rule should be waived in cases where the trade description submitted for registration is already reserved under national law or sanctioned by recognized use. A special expression "registered specific character" and, where appropriate, a Community symbol may then be displayed in the labelling, presentation and advertising of the foodstuff (Articles 11, 12 and 13).

2.4. The guarantees provided by the Community certificate of specific character must be founded on strict monitoring of conformity with the product specification. Member States are required to set up inspection arrangements to which the producers must be subject. Regular monitoring of specific character may be carried out by an independent specialized agency approved by the Member State. In order to harmonize inspection requirements across the entire Community and to be able to evaluate the equivalence of systems applied in third countries, the conditions for the approval of inspection agencies at Member State level are laid down and their functions are defined (Article 14). Monitoring by these agencies does not replace official inspection by the Member State.

2.5. A producer wishing to use a registered trade description must use the same product specification and submit to inspection in accordance with the Regulation (Article 15).

2.6. It is possible for a Community certificate of specific character and certificates of specific character issued by Member States to be used simultaneously. But a foodstuff may carry two certificates only for five years. This period is regarded as sufficient for the Community certificate to become known (Article 17).

2.7. Third countries may apply for Community registration of trade descriptions for foodstuffs carrying a national certificate of specific character offering guarantees equivalent to those provided for under this Regulation. Where the conditions of equivalence are not met, international agreements may be concluded (Articles 19 and 20).

2.8. Community legal protection may only be provided for trade descriptions of foodstuffs carrying a Community certificate of specific character complying with this Regulation. A trade description registered at Community level may not therefore be used for a foodstuff other than that specified in the Community register, nor imitated in any Member State or third country which has concluded an agreement with the Community (Article 21).

2.9. Financial provisions are included, not in order to provide direct support for products, but to expand outlets, for instance through campaigns to promote certificates of specific character and the guarantees they provide. Furthermore, since inspections give rise to investments and high costs, aid may be granted to groups of producers in the start-up phase, especially where the products are slow to show a return, for instance beef (Article 24).

Provision is made for consultation of an ad hoc committee as follows:

- where a decision is to be taken by the Commission under the objections procedure or the procedure for withdrawing registration of foodstuffs produced in third countries;

- for the purposes of drawing up the detailed rules for the application of this Regulation.

Proposal for a
COUNCIL REGULATION (EEC)
on certificates of specific character for foodstuffs

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 113 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas the production, manufacture and distribution of foodstuffs play an important role in the Community economy;

Whereas, in the context of the reorientation of the common agricultural policy, the diversification of agricultural production should be encouraged; whereas the promotion of specific quality products could be of considerable benefit to the rural economy, particularly in less-favoured or remote areas, by improving the income of farmers and by retaining the rural population in these areas;

Whereas, in the context of the completion of the Single Market in foodstuffs, food producers should be provided with instruments which enable them to enhance the market value of their products while protecting consumers against improper practices and ensuring fair trade;

(1) OJ No ...

(2) OJ No ...

(3) OJ No ...

Whereas, in accordance with the Council Resolution of 9 November 1989 on future priorities for relaunching consumer protection policy⁽⁴⁾, account should be taken of increasing consumer demand for greater emphasis on quality and information as regards the nature, method of production and processing of foodstuffs and their special characteristics; whereas given the diversity of products on the market and the abundance of information concerning them, consumers must, in order to be able to make a better choice, be provided with clear and succinct information regarding the specific characteristics of foodstuffs;

Whereas a voluntary system based on regulatory criteria will help attain these aims; whereas such a system enabling producers to announce the quality of a foodstuff throughout the Community must offer every guarantee so that references to it in the trade are substantiated;

Whereas certain producers would like to derive market value from the specific character of foodstuffs whose inherent characteristics distinguish them clearly from similar foodstuffs; whereas, in order to protect the consumer, the certified specific character of a foodstuff should be subject to inspection;

Whereas, given the specific character of such foodstuffs, special provisions should be adopted to supplement the labelling rules laid down in Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs⁽⁵⁾, as last amended by Directive 89/395/EEC⁽⁶⁾; whereas, in particular, an expression and, as appropriate, a Community symbol should be devised to accompany the trade description of foodstuffs and inform the consumer that it is a foodstuff presenting guaranteed specific characteristics;

(4) OJ No C 294, 22.11.1989, p. 1.

(5) OJ No L 33, 8.2.1979, p. 1.

(6) OJ No L 186, 30.6.1989, p. 17.

Whereas, to guarantee that foodstuffs consistently possess the certified specific characteristics, groups of producers must themselves define the said characteristics in a product specification; whereas the rules for approving inspection bodies responsible for checking that the product specification is complied with must be uniform throughout the Community;

Whereas in order not to create unfair conditions of competition any producer must be able to use a registered trade description if the foodstuff he produces or processes complies with the relevant specification and the inspection body he has selected is approved;

Whereas producers should be allowed to apply for a Community certificate of specific character and a national certificate of specific character; whereas, however, the simultaneous use of references to the two certificates on the same foodstuff should be restricted;

Whereas provision should be made for arrangements allowing trade with third countries offering equivalent guarantees for the issue and inspection of certificates of specific character in their territory or the opening of negotiations;

Whereas, if they are to be attractive to producers and reliable for consumers, expressions relating to the specific character of a foodstuff, as provided for in this Regulation, must be granted legal protection and be subject to official inspection;

Whereas provision should be made for Community measures involving financial assistance to provide comprehensive information to the members of the trade and consumers and to facilitate the use by producers and manufacturers of the Community certificate of specific character;

Whereas a procedure should be provided for in this Regulation to establish close cooperation between the Member States and the Commission in an advisory committee set up for the purpose,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the rules under which foodstuffs marketed in the Community may qualify for a Community certificate of specific character.
2. This Regulation shall apply without prejudice to more specific Community provisions, in particular those relating to organic production methods.

Article 2

For the purposes of this Regulation:

1. Community certificate of specific character means recognition, sanctioned by Community registration, that a foodstuff possesses a number of specific characteristics which distinguish it clearly from similar products in the same category.
2. Producer means a natural or legal person whose occupation concerns products of the land, of stockfarming or of fishing, or the processing thereof.
3. Group means any association, irrespective of its legal form, of producers working with the same foodstuff.

Article 3

The Commission shall set up and administer a register of foodstuffs whose specific character has been recognized at Community level in accordance with the procedure laid down by this Regulation.

Article 4

In order to appear in the register referred to in Article 3, a foodstuff must possess specific characteristics due to its raw materials and/or the methods of its production, which differentiate it from similar foodstuffs.

A foodstuff

(a) which merely meets the criteria laid down in a standard or in Community or national rules, or

(b) whose specific character is due to its provenance or geographical origin may not be registered.

Article 5

Only groups of producers of foodstuffs shall be authorized to apply for recognition of the specific character thereof.

Article 6

1. The group shall define in a product specification the specific characteristics of the foodstuff and the obligations of the producers.

2. The product specification shall include:

- the trade description referring to the specific character of the foodstuff concerned by the application,
- the rules governing its production,
- a description of the final foodstuff giving its main physical, chemical, microbiological and/or organoleptic characteristics,
- the minimum requirements and inspection procedures to which production is subject.

Article 7

1. The application for registration comprising the product specification shall be submitted to the competent authority in the Member State in which the group is established.

2. The competent authority shall forward the application to the Commission if it considers that the requirements of Articles 4, 5 and 6 are fulfilled. Otherwise, a negative decision is notified to the applicant with an indication of the means of redress available under the legislation and the deadlines within which appeals must be lodged.

3. No later than 1 April 1992 Member States shall publish details of the competent authority which they have designated and shall inform the Commission accordingly.

Article 8

1. The Commission shall publish in the Official Journal of the European Communities the main points of the application forwarded by the competent authority referred to in Article 7, and in particular the trade description of the foodstuff referring to its specific character in accordance with Article 6(2) and the references of the applicant.

2. Any legal or natural person is authorized to consult the application submitted to the competent authority.

3. Within three months from the date of publication provided for in paragraph 1 any other Member State may notify to the Commission its opposition to registration. Such opposition must be substantiated.

4. Any legal or natural person individually and directly concerned may notify to the Member State in which he is established its comments or opposition to the registration. The Member State shall take the necessary measures to give consideration to such comments or opposition within the specified time.

Article 9

1. If no objections are notified to the Commission within three months, it shall enter in the register provided for in Article 3 the main points referred to in Article 8(1) and publish them in the Official Journal of the European Communities.

2. If objections are notified within three months, the Commission shall invite the Member States concerned to seek an agreement between themselves within a further period of three months.

(a) If such agreement is reached, the Member States shall notify to the Commission all the information on which it is based, together with the opinion of the applicant and the opposing party. If the information received pursuant to Article 7(2) is unchanged, the Commission shall proceed as laid down in paragraph 1. Otherwise, it shall initiate the procedure laid down in Article 8 in respect of any new application it receives.

(b) If no agreement is reached, the Commission shall take a decision in accordance with the procedure laid down in Article 23.

Article 10

In order to take account in particular of developments on the market for foodstuffs and the progress of scientific and technical knowledge, the group which made the original application may submit to the competent authority of the Member State in which it is established an application for the amendment of the product specification on the basis of which it obtained the Community certificate of specific character. In this case, Articles 6 to 9 shall apply.

Article 11

In accordance with the procedure laid down in Article 23 the Commission may define a Community symbol which may be used in the labelling, presentation and advertising of foodstuffs carrying a Community certificate of specific character in accordance with this Regulation.

Article 12

1. From the date of publication provided for in Article 9(1) the trade description referring to specific character shall be reserved for the foodstuff corresponding to the published product specification.

2. Notwithstanding paragraph 1, such reservation shall not apply to a trade description referring to specific character and registered in accordance with this Regulation if the said description, on the date of publication of the application provided for in Article 8(1) and not later than five years after the entry into force of this Regulation, is already reserved pursuant to national provisions or has been sanctioned by use for at least five years.

3. The derogation provided for in paragraph 2 shall apply for five years from the date of publication of the application provided for in Article 8(1) if the registration of the trade description referring to specific character has not been the subject of opposition as provided for in Article 9(2).

Article 13

1. From the date of publication provided for in Article 9(1) the expression "registered specific character" and, where applicable, the Community symbol provided for in Article 11 may be applied to foodstuffs corresponding to the published product specification.

2. The expression "registered specific character" and, where applicable, the Community symbol may be applied solely to foodstuffs meeting the requirements of this Regulation.

Article 14

1. Before 1 April 1992 Member States shall set up inspection arrangements to ensure that foodstuffs carrying a reference to their registered specific character comply with the product specification.

2. Such arrangements may comprise one or more bodies approved for the purpose by the competent authorities of the Member States. The latter shall send the Commission a list of approved bodies together with their respective competences. This information shall be published in the Official Journal of the European Communities.

3. To be granted approval, the inspection arrangements must offer adequate guarantees as to objectiveness and impartiality vis-à-vis any producer subject to inspection, and comprise on a permanent basis the necessary expertise and facilities to ensure the inspection of foodstuffs covered by a Community certificate of specific character.

If the inspection arrangements include recourse to an outside agency for some of the inspections, the said agency must offer the same guarantees. In this case, the approved bodies remain responsible vis-à-vis the competent authority for all the inspections.

4. If the inspection bodies find that a foodstuff carrying the expression "registered specific character" does not meet the requirements of the product specification, they shall take appropriate measures and, where necessary, withdraw the producer's right to use the expression or the registered trade description if it is reserved in accordance with Article 12. In this case, the decision shall be notified to the party concerned, with an indication of the means of redress available under the legislation and the deadlines within which appeals must be lodged.

They shall inform the competent authority of the measures taken.

5. The competent authority may withdraw the approval of inspection bodies where the criteria specified in paragraph 3 are no longer met. It shall inform the Commission thereof, which shall publish a revised list of approved bodies in the Official Journal of the European Communities.

Article 15

1. The trade description referring to specific character, the expression "registered specific character" and, where applicable, the Community symbol may be used by any producer complying with the published information.

2. A producer intending to take up the option provided for in paragraph 1, even if he belongs to the group making the original application, shall, when the foodstuff concerned is first placed on the market, inform the competent authority of the Member State in which he is established by sending a specimen of the labelling used for the product. At the same time, he must specify the inspection body which he has chosen.

Article 16

Detailed rules for the application of Articles 6 to 9 and 14 shall be adopted in accordance with the procedure laid down in Article 23.

Article 17

1. A producer may not use simultaneously for the same foodstuff a Community certificate of specific character and a certificate of specific character issued by a Member State granting equivalent legal protection.

2. Notwithstanding paragraph 1, the simultaneous display in the labelling, presentation and advertising of the expression "registered specific character" and a reference to a certificate of specific character issued by a Member State shall be authorized for five years from the date of registration of the Community certificate of specific character where the national certificate of specific character was granted prior to the Community certificate.

Article 18

A Member State may not oppose the placing on its market of a foodstuff from another Member State marketed under a trade description referring to specific character which is registered at Community level or approved under a national scheme which offers guarantees equivalent to those arising from application of this Regulation.

Article 19

1. Without prejudice to international agreements, a third country may, on the initiative of its producers, apply for a Community certificate of specific character for a foodstuff, on condition that:

- the foodstuff satisfies the criteria referred to in Articles 4 and 6;
- the third country has inspection arrangements equivalent to those laid down in this Regulation;
- the third country is prepared to provide protection equivalent to that available under this Regulation to foodstuffs from the Community carrying a Community certificate of specific character.

2. For the purposes of paragraph 1, the third country shall submit an application to the Commission and the registration procedure laid down in Articles 8 and 9 shall apply mutatis mutandis.

3. At the duly-substantiated request of a Member State or on its own initiative, the Commission shall decide, in accordance with the procedure laid down in Article 23, whether to suspend or withdraw a trade description registered in respect of a foodstuff imported from a third country where the conditions laid down in paragraph 1 are no longer met.

Article 20

The Commission shall have authority to initiate negotiations with a view to concluding agreements with third countries guaranteeing reciprocal protection for trade descriptions and certificates of specific character and inspection of the use thereof.

Article 21

1. Member States shall take the necessary measures to ensure legal protection against abusive or fallacious use or imitation of trade descriptions referring to specific character, the expression "registered specific character" and, where applicable, the Community symbol.

2. Member States shall inform the Commission and the other Member States of the measures taken.

Article 22

Member States shall take appropriate measures to ensure that trade descriptions used at national level do not give rise to confusion with trade descriptions registered pursuant to this Regulation.

Article 23

The Commission shall be assisted by a committee of an advisory nature 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, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 24

1. The Commission shall adopt measures comprising financial support in accordance with the procedure laid down in Article 23 in order to ensure:

- the provision of information to consumers
- the promotion of foodstuffs carrying a certificate of specific character
- assistance to groups starting activities arising from the application of this Regulation. The Commission shall report annually to the European Parliament and the Council on the measures adopted.

2. The measures provided for in this Article shall constitute interventions intended to stabilize the agricultural markets within the meaning of Article 1(2) of Council Regulation (EEC) No 729/70⁽⁷⁾.

Article 25

Before 1 January 1997 the Commission shall submit to the Council a report on the application of this Regulation, together with any appropriate proposals.

The report must cover, in particular, the consequences of the application of Articles 9, 12 and 17.

Article 26

This Regulation shall enter into force on 1 January 1992.

It shall apply from 1 April 1992.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

(7) OJ No L 94, 28.4.1970, p. 13.

FICHE FINANCIERE

1. LIGNE BUDGETAIRE : 381 (APB 1991)		CREDITS : 23 Mio ECU		
2. INTITULE DE LA MESURE : Proposition de règlement du Conseil concernant les attestations de spécificité pour les denrées alimentaires				
3. BASE JURIDIQUE : Art. 43 du Traité				
4. OBJECTIFS DE LA MESURE : Promotion de produits alimentaires de qualité en vue d'améliorer le revenu des agriculteurs des zones défavorisées et valorisation de ces produits auprès des consommateurs.				
INCIDENCES FINANCIERES	PERIODE DE 12 MOIS Mio ECU	EXERCICE EN COURS (90) Mio ECU	EXERCICE SUIVANT (91) Mio ECU	
5.0 DEPENSES A LA CHARGE - DU BUDGET DES CE (RESTITUTIONS/INTERVENTIONS) - DES BUDGETS NATIONAUX - D'AUTRES SECTEURS	(1)	0	(1)	
5.1 RECETTES - RESSOURCES PROPRES DES CE (PRELEVEMENTS/DROITS DE DOUANE) - SUR LE PLAN NATIONAL				
	1992	1993	1994	1995
5.0.1 PREVISIONS DES DEPENSES				
5.1.1 PREVISIONS DES RECETTES				
: MODE DE CALCUL :				
6.0 FINANCEMENT POSSIBLE PAR CREDITS INSCRITS AU CHAPITRE CONCERNE DU BUDGET EN COURS D'EXECUTION				OUI
6.1 FINANCEMENT POSSIBLE PAR VIREMENT ENTRE CHAPITRES DU BUDGET EN COURS D'EXECUTION				OUI
6.2 NECESSITE D'UN BUDGET SUPPLEMENTAIRE				NON
6.3 CREDITS A INSCRIRE DANS LES BUDGETS FUTURS				OUI
OBSERVATIONS :				
(1) Les dépenses interviendront suite à l'adoption par la Commission de mesures en application du règlement cadre visé sous objet.				

FICHE D'IMPACT SUR LA COMPETITIVITE ET L'EMPLOI

Règlement relatif aux attestations de spécificité des denrées alimentaires.

I. Quelle est la justification principale de la mesure ?

Le règlement permet aux producteurs de denrées alimentaires de promouvoir leurs produits présentant des caractéristiques spécifiques dues à leur mode de production particulier.

II. Caractéristiques des entreprises concernées

En particulier : les entreprises qui peuvent être considérées comme producteur.

- **Y a-t-il un grand nombre de PME ? Oui**
- **Note t'on des concentrations dans des régions :**
 - **éligibles aux aides régionales des E.M. ?**
 - **éligibles au Feder ?**

III. Quelles sont les obligations imposées directement aux entreprises ?

Il n'y a pas d'obligations. Il s'agit d'un système volontaire, mais à partir du moment où les entreprises optent pour ce système, ces dernières doivent se conformer au règlement.

IV. Quelles sont les obligations susceptibles d'être imposées indirectement aux entreprises ?

Il peut exister indirectement une obligation d'agir par la procédure d'opposition.

V. Y a-t-il des mesures spéciales pour les PME ? Non

- **Lesquelles ?**

VI. Quel est l'effet prévisible ? **Positif pour les entreprises choisissant ce système.**

- **sur la compétitivité des entreprises ?**
Permettre aux entreprises de mieux vendre leurs produits.
- **sur l'emploi ?**
Permettre le maintien de structures de production dans les zones rurales en voie de désertification.

VII. Les partenaires sociaux ont-ils été consultés ? Non

- **avis des partenaires sociaux**