

DESIGNATION OF ORIGIN AND GEOGRAPHICAL INDICATIONS

Lecturer **Ioan TOMESCU**¹

Abstract

The production, manufacturing and distribution of agricultural and food products play an important role in the state economy, but also in that of the European Union. The diversification of agricultural production can lead to a better balance between supply and demand. Moreover, it brings an economic benefit to the rural area by promoting products with specific characteristics in disadvantaged or remote areas, ensuring the increase in the population's income in these areas. At European level, a protection system has been established to ensure protection in each Member State of the European Union, which encourages the increasing use of the terms 'geographical indications' and 'designations of origin', an approach which deals with the optimal registration conditions for an equal competition between the producers, increased guarantees for the consumers that these designations clearly constitute a quality guarantee, as they allow the preservation of the specificity of the product. Similar to other Member States of the Union, in 2011 Romania transmitted to the European Commission, according to the provisions of Regulation (EC) no. 1234/2007, the technical specifications corresponding to all the controlled designations of origin (DOC) and geographical indications (GI) for products used at national level, drawn up by the producers' associations established in the geographical areas demarcated by DOC and GI, in order to ensure their protection based on the above-mentioned European legislation.

Keywords: *geographical indications, designation of origin, commercial competition, consumers, product promotion, intellectual property protection.*

JEL Classification: K23, K33

1. Introduction

Currently, more and more consumers in the European Union and implicitly in Romania, pay attention to the quality of the food they consume to the detriment of its quantity. This attention leads to a filtering of specific products and a demand for agricultural or food products whose geographical origin is known.

PGI (Protected Geographical Indication) and PDO (Protected Designation of Origin) are two reference levels relating to agricultural and food products for which there is a connection between the characteristics of the agricultural or food product and its geographical origin.

Controlled Designation of Origin (DOC) is the name of a region or locality, a particular place or, in exceptional cases, a country, which is used to designate a product originating in that region, locality, defined place or country and whose quality or characteristics are essentially or exclusively due to the geographical environment, containing natural and human factors and whose production, processing and preparation take place within the defined geographical area.

Geographical indication (GI) is the name of a region or locality, a defined place or, in exceptional cases, a country, which is used to designate a product originating in that region or locality, in that particular place or in that country, and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and whose production and/or processing, and/or preparation takes place within the defined geographical area.

2. General notions regarding the designation of origin and geographical indications

For these designations, which arose from the need to protect agricultural and food products obtained by various producers whose geographical origin is identifiable, a special notion has been recognized, namely that of 'Registered Designation of Origin', which supports the producers, who are encouraged to pursue higher incomes thanks to it, but also the consumers of this type of products, who will be encouraged to consume them due to their special qualitative properties, given that they are mainly concerned with the origin that attracts trust in such consumption.

¹ Ioan Tomescu - Department of Legal Sciences, Faculty of Law and Administrative Sciences, "Andrei Şaguna" University of Constanţa, Romania, tomescu_ioan@yahoo.com.

Indications of origin or designations of origin do not yet have unanimously accepted definitions, thus²:

"- In accordance with the provisions of the Madrid Agreement, the indication of origin indicates a product's place of origin;

- In accordance with the provisions of the Lisbon Agreement, the designation of origin is a geographical designation, which designates a product originating from the region or from the respective place and whose quality or characteristics are due exclusively or essentially to the geographical environment". We can conclude that the designation of origin is a particular case of the geographical indication.

- In accordance with the provisions of the Directive of the European Economic Committee, geographical indication represents the name of a place where the product originates from and whose decisive quality can be attributed to the respective geographical origin;

- The Conference of the Committee of Experts of the World Intellectual Property Organization (WIPO) stated that geographical indication designates both the indication of origin and the designation of origin;

- According to the General Agreement on Tariffs and Trade (GATT), geographical indication is used to cover the designation of origin.

In principle, the use of a false or misleading indication of origin is illegal. While the indication of origin shows only the provenance of the product, the designation of origin also shows the special characteristics of the product determined by the geographical area from which it comes and to which the designation refers.

At European level, a system of protection has been established to ensure the protection in each Member State of the European Union, which encourages the increasing use of the terms 'geographical indications' and 'designations of origin', an approach which deals with the optimal registration conditions for an equal competition between the producers, increased guarantees for the consumers, that these designations clearly constitute a quality guarantee, as they allow the preservation of the specificity of the product.

Similar to other Member States of the Union, in 2011 Romania transmitted to the European Commission, in accordance with the provisions of Regulation (EC) no. 1234/2007, the technical specifications corresponding to all controlled designations of origin (DOC) and geographical indications (GI) for the products used at national level, drawn up by producers' associations established in the geographical areas demarcated by DOC and GI, in order to ensure their protection, based on the above-mentioned European legislation.

In order for an agricultural or food product to have such a reference, it must meet a number of conditions.

An explanation of PGI and PDO:

1. PGI (Protected Geographical Indication). The product must:

- originate from that region, specific place or country;
- its quality or characteristics are essentially or exclusively due to a particular geographical environment, with its natural and human factors;
- its production, processing and preparation take place in the defined geographical area.

2. PDO (Protected Designation of Origin). The product must:

- originate from that region, specific place or country;
- possess a specific quality, reputation or other characteristics attributable to the respective geographical area;
- the production and/or processing and/or preparation takes place in the defined geographical area.

Thus, in the case of the designation of origin, the raw materials used must come only from the defined geographical area and the production, processing, preparation must take place only in the

² Stefan Cocos, *The a, b, c of intellectual property protection and capitalization [A,b,c-ul protectiei si valorificarii proprietatii intelectuale]*, C.A. Rosetti, Bucharest, 2004, p. 39.

specified geographical area, and in the case of the geographical indication, the manufacturing phases must not take place entirely in the defined geographical area, but they must be linked to the territory and have notoriety.

Romania has managed to register several products at the European Union level, exemplifying in this respect with:

- Telemea (white cheese) de Ibănești - the first Romanian product with PDO
- Salam (salami) de Sibiu – PGI
- Novac afumat (smoked Bighead carp) din Țara Bârsei - PGI
- Magiun de prune (plum jam) Topoloveni - PGI
- Cașcaval (hard cheese) de Săveni - PGI
- Scrumbie de Dunăre afumată (Smoked Danube mackerel) - PGI
- Cârnați de Pleșcoi (sausages) – PGI

2.1. The legislation in the field

Trademark protection is acquired in Romania by registering with OSIM/ State Office for Inventions and Trademarks.

International trademark protection is recognized in Romania on the basis of the Madrid Agreement and the Protocol related to the Agreement.

The protection of EU trademarks is recognized in Romania on the basis of Regulation (EC) no. 207/2009 of the Council of 26 February 2009 on the Community trade³.

In Europe, the protection of geographical indications is available for both agricultural and non-agricultural products. Agricultural and food products (wines, spirits) can benefit from a unitary protection granted exclusively at EU level. Geographical indications for non-agricultural products are protected only at national/regional level, through the various national legal frameworks.

At EU level, the unitary protection of geographical indications for wines (1970), spirits (1989), aromatised wines (1991) and other agricultural and food products (1992) has been established.

The European legislation:

- Regulation (EU) no. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural and food products.
- Regulation (EU) no. 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.
- Regulation (EC) no. 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, designation, presentation, labelling and protection of geographical indications of spirit drinks.

During March-August 2017, working meetings were held in 40 counties of Romania, organized by the agricultural directorates, as a follow-up to the timetable approved by the MADR/ Ministry of Agriculture and Rural Development management in order to accelerate the implementation of the "Program to encourage traditional products" in the Agriculture and Rural Development Policy Chapter of the government program 2017-2020.

2.2. National legislation

The national legislation consists of:

- art. 3, letter g) - Law 84/1998 on trademarks and geographical indications - "the geographical indication is a designation used to identify a product originating from a country, region or locality of a state, in the cases in which a quality, a reputation or other defined characteristics can be essentially attributed to the respective geographical origin"⁴

³ <http://data.europa.eu/eli/reg/2009/207>, Regulation (EC) no. 207/2009 of the Council of 26 February 2009 on the Community trade.

⁴ Art 3, letter g) of Law no. 84/1998 "on trademarks and geographical indications".

- art. 3, letter l) - Law 84/1998 - "the register of geographical indications - represents the data collection, administered by OSIM, which includes the geographical indications registered in Romania, as well as all the data entered regarding these registrations, regardless of the medium on which these data are kept"

- art. 5 letter f) - Law 84/1998 on the refusal to register⁵ "trademarks which are likely to mislead the public, for example as to the geographical origin, quality or nature of the product or service"

The producers' associations carrying out a production activity in the respective geographical area have the right to request from OSIM the registration of a geographical indication for the products indicated in the application.

The registration of a geographical indication can be requested from OSIM directly or through an industrial property advisor, and it is a subject to the tax provided by law.

2.3. Jurisprudence

The Court of Justice of the European Union has confirmed the fact that geographical indications are an intellectual property right.

The Court already has a rich case law regarding the protected designations of origin (PDO) and protected geographical indications (PGI).

The use of a designation of origin is allowed only for certain groups of persons or entrepreneurs living in the respective geographical area and only for certain products from that area. For example, "Champagne", "Cognac", "Chianti", "Pilsen", "Porto", "Havana" are just a few well-known examples of names associated around the world with products of a certain nature and quality⁶. A common feature of these names is their geographical correlation, i.e., their function to designate existing places, cities, regions, or countries.

2.4. The procedure for registering a geographical indication

The procedure for the protection of geographical indications begins with the submission of an application to OSIM, according to the registration application form, completed by typing (on a computer or typewriter), containing the list of persons authorized to use the geographical indication, according to the guide on the last page of the form⁷.

The application is submitted for registration at the Document Reception Office, accompanied by proof of payment of the fees and the annexes, receiving the stamp with the date and registration number. Applications for registration can also be sent by post, with the acknowledgment of receipt being recommended.

Within 3 months from the submission to OSIM, the application for registration of a geographical indication is subject to the examination of the conditions provided in art. 73, 75 and 76 of the Law and art. 43 of the regulation.

If the application meets the legal requirements, OSIM decides to register the geographical indication and grants the applicant producer association the right over its use.

Within two months from making this decision, OSIM shall publish in the BOPI (Official Industrial Property Bulletin) the geographical indication and the list of persons authorized to use the geographical indication.

An opposition to the registration of a geographical indication may be filed within two months from the publication of the application, for non-observance of the provisions of art. 76 of the Law or if a person has a legitimate interest based on a previously protected industrial property right, with which the geographical indication would come into conflict.

⁵ Art. 5, letter f) of Law no. 84/1998 "on trademarks and geographical indications".

⁶ *Intellectual property reding material* (introduction to intellectual property), p. 212.

⁷ Roş, V., Spineanu Matei, O., Bogdan, D., *Dreptul proprietăţii intelectuale. Mărcile şi indicaţiile geografice [Intellectual property law. Trademarks and geographical indications]*, All Beck Publishing House, Bucharest, 2003, p.152.

OSIM shall serve a copy of the opposition to the applicants to the registration of the geographical indication so that they may submit their comments on the reasons for the opposition.

If the reasons for the opposition are well-founded, OSIM will reject the application for registration of the geographical indication and will publish the rejection decision in the BOPI (Official Industrial Property Bulletin).

Otherwise, OSIM shall register the geographical indication in the Geographical Indications Register, shall publish it in the BOPI and issue to the applicant producer association the certificate of registration of the geographical indication and grants the right to use it; OSIM will publish in BOPI and will mention in the Geographical Indications Register the body entitled to carry out the control of the products, established in the technical specifications of the geographical indications⁸.

The right to use the geographical indication, acquired through its registration, belongs to the members of the association registered on the list communicated to OSIM. The persons authorized to use a geographical indication for certain products have the right to use it in the commercial area, being applied only to these products, in accompanying documents, advertisements, booklets/leaflets, and may apply the mention: registered geographical indication.

It is forbidden for unauthorized persons to use a geographical indication or to imitate it. The placement on the market of products indicating or suggesting that the respective product originates from a geographical region other than the actual place of origin for the purpose of misleading the public as to the geographical origin of the product shall constitute an offense and shall be punishable by imprisonment from 3 months to 2 years or a fine, the guilty persons being obligated to provide compensation, according to common law. The registration of a geographical indication in the name of a producer association does not constitute an obstacle to the registration of the same indication by any other association having the quality required by law.

The term of protection of the geographical indications runs from the date of submission of the application to OSIM and it is unlimited. The right of use is granted to the applicant for a period of 10 years, with the possibility of unlimited renewal, if the conditions under which this right was acquired are maintained, and with the payment of the legal fee⁹. The right to use a geographical indication may NOT be the subject of any transmission.

2.5. The application for the registration of a geographical indication

The application for the registration of a geographical indication shall contain:

- a) the express request regarding the registration of a geographical indication and granting of the right to its use;
- b) the name and registered office of the producer association requesting the registration of the geographical indications;
- c) the list of persons authorized to use the geographical indication;
- d) the geographical indication which is the subject of the application;
- e) the type of products to which the geographical indication refers, as well as the indication of the place of manufacture and the boundaries of the geographical production area;
- f) the name or designation and address or registered office of the authorized representative, if the producer association has appointed a representative.

The application for registration of the geographical indication shall be accompanied by:

- a) the technical specifications containing the elements provided in para. (4);
- b) a certificate of conformity of the products with the elements provided in the technical specifications, issued by the specialized central public authority;
- c) proof of payment of the registration fee for the geographical indication;
- d) the power of attorney for representing the applicant, if applicable.

If the applicant for the registration of a geographical indication is a foreign producer

⁸ *How to register a trademark - Trademark or geographical indication [Cum înregistrăm o marcă - Marcă sau o indicație geografică]*, Oficiul de stat pentru mărci și invenții/ State Office for Trademarks and Inventions, Bucharest, 2020, p. 17.

⁹ Roș, V., Spineanu Matei, O., Bogdan, D., *op. cit.*, 2003, p. 128.

association, the application shall be accompanied by the following documents:

- a) the supporting document, in certified copy for conformity, of the protection title obtained in the country of origin;
- b) proof of payment of the registration fee for the geographical indication;
- c) the power of attorney for representing the applicant.

The technical specifications annexed to the application for registration of the geographical indication shall contain at least the following elements:

- a) the name of the product to which the geographical indication refers;
- b) the description of the product and its main characteristics;
- c) the delimitation of the geographical production area;
- d) the elements proving that the product originates from the geographical production area;
- e) the description of the method of obtaining the product;
- f) the elements that justify the connection of the product to the area or with its geographical origin;
- g) the references regarding the quality control procedures of the products, as well as the body entitled to carry out this control¹⁰.

2.6. An example of a registered product with a protected geographical indication

The smoked Danube mackerel was approved by the European Commission to become a Protected Geographical Indication (PGI) product, and the European Commission's decision was published on Monday, 3 December 2018, in the Official Journal of the EU¹¹.

A total of 1,440 protected products are registered in the EU.

The Danube mackerel is a wild fish which migrates from the Black Sea into the Danube. The species cannot be bred in aquaculture and is only caught during its migration into the Danube. It has 250-400 grams and 25-30 centimetres in size, being recognized as the fish with the highest fat content in the world, relative to its size.

The mackerel is prepared in its complete form; after cleaning, it is salted and cold-smoked after an old method, from the defined geographical area. Smoked fish are golden, metallic in colour due to the smoking process.

For the Danube Delta locals, fishing is the main and the oldest occupation.

Therefore, this activity is deeply rooted in the culture of the inhabitants of the Danube Delta, while also being a part, as a characteristic, of the memory of many tourists from around the world who visit the Danube Delta localities.

3. Conclusions

The Protected Geographical Indication and the Controlled Designation of Origin provide commercial protection for the products to which they are granted, both on the EU market and on the markets with which the European Union concludes trade and free trade agreements, following negotiations. Thus, no other product which is made outside the indicated geographical area may bear the respective name on the market.

This gives local producers the exclusive right to use the traditional "brand".

There is, however, a trap: the small producers who cannot or do not want to join the producer association which has submitted the application for registration may not be able to further use the respective designation for a specific traditional product.

The international and EU legislation mark a period of intense preoccupation to ensure the most accurate, efficient and operational framework for the implementation of specific policies.

These geographical descriptions act as a guarantor of the origin and quality of the products.

¹⁰ *Ibid*, p. 128

¹¹ https://ec.europa.eu/romania/news/20181203_scrumbia_de_dunare_afumata_produus_recunoscut_si_protejat_in_ue_ro.

However, the guarantee of origin and quality would not be possible in the absence of a legal framework, both at European and national level, which sets strict requirements for the product with geographical descriptions throughout its entire journey from production to the consumer's table.

Bibliography

1. How to register a trademark - Trademark or geographical indication [Cum înregistrăm o marcă - Marcă sau o indicație geografică], Oficiul de stat pentru mărci și invenții/State Office for Trademarks and Inventions, Bucharest, 2020.
2. Law no. 84/1998 on trademarks and geographical indications.
3. Regulation (EC) no. 207/2009 of the Council of 26 February 2009 on the Community trade, <http://data.europa.eu/eli/reg/2009/207>.
4. Roș, V., Spineanu, Matei, O., Bogdan, D., *Dreptul proprietății intelectuale. Mărcile și indicațiile geografice* [Intellectual property law. Trademarks and geographical indications], All Beck Publishing House, Bucharest, 2003.
5. Stefan Cocos, *The a, b, c of intellectual property protection and capitalization* [A,b,c-ul protecției și valorificării proprietății intelectuale], Ed. Rosetti, Bucharest, 2004.