

**THE SYSTEM OF THE PROTECTION
OF GEOGRAPHICAL INDICATIONS
AND DESIGNATIONS OF ORIGIN
FOR AGRICULTURAL PRODUCTS**

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Abstract. The aim of this article is to determine the scheme of actual legal protection of geographical indications and designations of origin for agricultural products and foodstuffs. The protection is reserved only for producers who fulfill all requirements mentioned in the regulations, considering region, origins and quality. They only may sell such products on the internal market under the certain logos. Labels are vital, giving EU farmers and producers the possibility of higher returns in exchange for better quality, and giving consumers specific products that come with the guarantee of a certain production method and enable to gain some financial support from the European Agricultural Fund for Rural Development.

Key words: protected geographical indication, protected designation of origin, temporary domestic protection list, product specification

INTRODUCTION

More and more consumers of agricultural products attach greater importance to the quality of foodstuffs they purchase. Quality as well as quantity and assortment are one of the most important aspects of the production. This quest for specific products generates a demand for agricultural products or foodstuffs with an identifiable geographical origin. More often products which designations of origin and geographical indications are easy to recognize because they have homogeneous indications. The use of such symbols or indications make this category of products and the guarantees attached to

them better known to consumers and permit easier identification of these products on the market so as to facilitate checks. The promotion of products having certain characteristics is very important. They can be of considerable benefit to the rural economy, particularly in less-favoured or remote areas, by improving the incomes of farmers and by retaining the rural population in these areas.

Unfortunately not each producer may use such indications. Quite often information misleads the consumer as to the true origin of the product. To avoid such situations the common legislator almost 20 years ago implemented legal rules on who and when may use such indications.

The Protected Geographical Indications (PGI) and Protected Designation of Origin (PDO) for agricultural products are assumed by the legal protection. They are the subject of legal protection by both common and domestic laws.

The aim of this paper is to determine the legal protection of geographical indications and designations of origin for agricultural products according to the current legislations.

Nowadays there are about 800 protected products that have been registered within European Union. Among them there are only two Polish. One of them is “Bryndza Podhalańska” (PDO) [Commission Regulation... 642/2007] and the second is “Oscypek” (PDO) [Commission Regulation... 127/2008, Stankiewicz 2005].

Therefore a question arises why there are only a few protected domestic products? Are the Polish farmers-producers covered by the same legal protection as they are within EU? Thus under the considerations comes the evaluation of farmers' availability to legal protection.

The paper's structure is divided into three parts. First one describes the legal scope of the protection system on the base of common and Polish regulations. The next one, considers the procedure of covering the products by the legal protection. The conclusion consists of the evaluation of the actual legal provisions on Protected Geographical Indications (PGI) and Protected Designation of Origin (PDO).

LEGAL PROTECTION OF GEOGRAPHIC INDICATIONS AND DESIGNATIONS OF ORIGIN – INTRODUCTORY ISSUES

The legal protection of geographical indications and designations of origin was introduced at the beginning of nineties of XX century on the base 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 [Council Regulation... 2081/1992].

Their main forerunner were French who established in 1935 The National Institute of the Labels of Origin (INAO – Institut National des Appellations d'Origine). Its main assignment was to control the quality of agricultural products [Szemberg 2007].

At the moment the system of the protection is covered by the Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [Council Regulation... 510/2006]. Its provision should enable to draw up one system within the European Union.

Thus at the beginning of this dissertation some definitions described in the mentioned regulation should be explained. According to Art. 2 PDO (Protected 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 possessing quality or characteristics which are essentially or exclusively due to a particular geographical environment with its inherent natural (weather conditions, soils) and human factors, and the production, processing and preparation of which take place in the defined geographical area.

All the products bearing the PDO logo have proven characteristics resulting solely from the terrain and abilities of producers in the region of production with which they are associated. PDO products thus require all stages of the food production process to be carried out in the area concerned. There must be an objective and close link between the product's features and its geographical origin. Examples are 'Huile d'olive de Nyons', 'Queijo Serra da Estrella' and 'Shetland lamb'. In other words, only olive oil from a recognised area in the vicinity of Nyons in France, cheese from the designated area of Serra da Estrella in Portugal, and lamb born, raised and slaughtered in the Shetland Islands in the United Kingdom, all meeting exacting requirements, can qualify to use these names and the logo [Fact Sheet... 2007].

Protected Geographical Indication (PGI) 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 or 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.

Products carrying the PGI logo have a specific characteristic or reputation associating them with a given area, and at least one stage in the production process must be carried out in that area, while the raw materials used in production may come from another region. Examples are 'Clare Island Salmon', 'Arancia Rossa di Sicilia' and 'Dortmunder Bier'. The only foodstuffs which can bear these names and the PGI logo are salmon from Clare Island in Ireland, blood oranges from Sicily and beer from the Dortmund area of Germany, all meeting particular quality specifications.

As traditional geographical or non-geographical names designating an agricultural product or a foodstuff which fulfill the special conditions shall also be considered as designations of origin or geographical indications. The certain geographical designations shall be treated as designations of origin where the raw materials for the products concerned come from a geographical area larger than, or different from, the processing area, provided that: the production area of the raw materials is defined; special conditions for the production of the raw materials exist; and there are inspection arrangements to ensure that the conditions are adhered to. It is important to indicate that according to previous provisions [Council Regulation... 2081/1992], the designations have been recognized as designations of origin in the country of origin before 1 May 2004.

By the legal protection are covered only products that are mentioned in Art. 1 of Council Regulation... [510/2006] if they go over the registration procedure¹. What is important: names that have become generic may not be registered.

¹ The list of products consists of: fresh meat (and offal), meat based products (cooked, salted, smoked, etc.), cheeses, other products of animal origin (eggs, honey, milk products excluding

It applies to “names that have become generic”. It 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 in the Community. Such an example is “French blue cheese”, “bees’ honey”, “Brie” or „Camembert” [Art. 3 Council Regulation... 510/2006].

A designation of origin or geographical indication shall not be registered where, in the light of a trademark’s reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product. For the same reasons a name may not be registered as a designation of origin or a geographical indication where it conflicts with the name of a plant variety or an animal breed. However the provisions in Commission Regulation... [1898/2006] allow the registration of the homonymous names or partly homonymous but only if there is an obvious way to recognize a new name among the ones already registered.

Special measurements might be undertaken if the registered name would jeopardize the existence of an entirely or partly identical name or the existence of products which have been legally on the market for at least five years preceding the date of the publication. Thus, according to Art. 13 section 3 [Council Regulation... 510/2006], provision may be made for a transitional period of up to five years. The transitional period may also be set for undertakings established in the Member State or third country in which the geographical area is located, provided that the undertakings concerned have legally marketed the products in question, using the names concerned continuously for at least five years preceding the date of the publication (Art. 5 section 5). However, the legislator demand of undertakings to note that point in the national objection procedure. The registered name and the identical unregistered name concerned may co-exist for a period not exceeding a maximum of 15 years, after which the unregistered name shall cease to be used.

REGISTRATION PROCESSES OF THE GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN

The Community registration procedure is the same for protected geographical indications and for protected designations of origin. It consists of two stages and starts at the level of member state. After fulfilling all obligations, the national authority checks the application and if it finds that the requirements of the regulation are satisfied, forwards the application to the European Commission.

According to the national law based on the Act of 17 December 2004 on the registration and protection of the names and indications of agriculture products and articles of compositions and on traditional products [Ustawa... 2004] Polish producers may take

butter, etc.), oils and fats (butter, margarine, oils, etc.), fruits, vegetables, cereals, whether or not processed, fish, molluscs, fresh crustaceans and ... – based products mentioned in the regulation, beer, beverages made from plant extracts, bread, pastry, cakes, confectionery, biscuits and other baker’s wares, natural gums and resins, mustard paste, pasta, hay, essential oils, cork, cochineal (raw product of animal origin), flowers and ornamental plants, wool, wicker, scutched flax. It shall not, however, apply to wine-sector products, except wine vinegars, or to spirit drinks.

full advantage of the possibilities to protect and register regional products provided by the EU regulations. Under the act, Minister of Agriculture and Rural Development (MA&RD) received the competences to assume and examine the applications. Its board of advisers is called Rada do Spraw Tradycyjnych i Regionalnych Nazw Produktów Rolnych i Środków Spożywczych [Art. 5 Ustawa... 2004].

The registration procedure starts with putting the application and compile the product's specification². All products are covered by the legal protection only if they are in the conformity with their specifications.

Only a group is entitled to apply for registration. For the purposes of this Regulation, "group" means any association, irrespective of its legal form or composition, of producers or processors working with the same agricultural product or foodstuff³. Other interested parties may participate in the group, such as natural or legal person.

According to Art. 2 of Commission Regulation... [1898/2006], natural or legal persons have to fulfill some conditions. They may be treated as a group where it is shown that both of the following conditions are fulfilled: the person concerned is the only producer in the defined geographical area willing to submit an application and the defined geographical area possesses characteristics which differ appreciably from those of neighboring areas or the characteristics of the product are different from those produced in neighbouring areas.

Each application may consider only one product or foodstuff. A group may only lodge a registration application only for the agricultural products or foodstuffs which it produces or obtains. The Member State (MA&RD and Council) scrutinizes the application by appropriate means to check that it is justified and meets the conditions of the Regulation. Then it publishes the application in the Departmental Official Journal.

From this moment each natural, legal person and legal entity or commercial company without a legal personality status, whose business it considers may lodge within 30 days an objection to the application. Otherwise Council gives its opinion on fulfillment the requirements mentioned in the Council Regulation... [510/2006]. Then the Minister of Agriculture considers that the requirements of this Regulation are met, it shall take a favourable decision and forward to the Commission the documents.

² The application for registration shall include at least: the name and address of the applicant group; the specification; information about the name and address of the authorities or bodies verifying compliance with the provisions of the specification. The most important part of the application is the specification, which should include at least: the name of the agricultural product or foodstuff comprising the designation of origin or the geographical indication; a description of the agricultural product or foodstuff, including the raw materials, if appropriate, and principal physical, chemical, microbiological or organoleptic characteristics of the product or the foodstuff; the definition of the geographical area; evidence that the agricultural product or the foodstuff originates in the defined geographical area; a description of the method of obtaining the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods as well as information concerning packaging; the name and address of the authorities or bodies verifying compliance with the provisions of the specification and their specific tasks; any specific labelling rule for the agricultural product or foodstuff in question; reasons why the packaging must take place in the defined geographical area to safeguard quality or ensure the origin or ensure control.

³ In the case of a name designating a trans-border geographical area or a traditional name connected to a trans-border geographical area, several groups may lodge a joint application.

The Member State may, on a transitional basis only, grant protection under this Regulation at national level to the name, and, where appropriate, an adjustment period, with effect from the date on which the application is lodged with the Commission. The lists of such names is open and run by the Ministry of Agriculture and Rural Development. Such transitional national protection shall cease on the date on which a decision on registration under the Council Regulation... [510/2006] is taken. According to Art. 37 of Polish Act [Ustawa... 2004] each person whose product's name was assigned on the list may use it in turnover.

But if the duly substantiated statement is lodged, The Council within 30 days from its receiving, has to take a decision of its legitimacy. Than Minister of Agriculture within 14 days calls for new application which was set according to the reservations. From that moment all procedure is being repeated. It ends with the Ministry's decision on fulfillment all conditions.

Then the name might be signed on the temporary, domestic protection list. The application after the examine is forwarded to the European Commission.

On the base of Art. 6 Council Regulation... [510/2006] the Commission scrutinizes by appropriate means the application to check that it is justified and meets the conditions laid down in this Regulation. This scrutiny should not exceed a period of 12 months. The Commission shall, each month, make public the list of names for which registration applications have been submitted to it, as well as their date of submission to the Commission. Such solution allows all parties who are interested in the protection system may constantly monitoring the registrations of new names. If the Commission finds that the application meets the requirements for registration, it publishes the summary application in the Official Journal of the European Union. If not it rejects the documents.

On the base of Art. 7 [Council Regulation... 510/2006] within six months from the date of publication in the Official Journal of the European Union, any Member State or third country may object to the registration proposed, by lodging a duly substantiated statement with the Commission. Any natural or legal person having a legitimate interest, established or resident in a Member State other than that applying for the registration or in a third country, may also object to the proposed registration by lodging a duly substantiated statement. If the Commission receives no admissible objection it shall register the name in the Official Journal of the European Union. If an objection is admissible, the Commission shall invite the interested parties to engage in appropriate consultations.

According to the national law based on the Act of 17 December 2004 [Ustawa... 2004] on the registration and protection of the names and indications of agriculture products and articles of compositions and on traditional products, each natural, legal person and legal entity or commercial company without a legal personality status, who has a justified reason may lodge the a statement of objection concerning the registration application of other member state. It has to be lodged within 5 months from the day of the official publish in the Official Journal of the European Union (Art. 28).

Statements of objection must be sent to the Commission by a Member State within 14 days. When the Commission receives a statement of objection, it first examines its admissibility. If the Commission finds that the objection is not admissible, it is rejected. The registration procedure continues as normal. However, if the objection is admissible,

the Commission passes the matter to the Member States concerned, with a request for them to reach a mutually acceptable solution.

CONCLUSIONS

The geographical indications and designations of origin for agricultural products after the registration are the subject of the legal protection. It is restricted only for certain producers whose product meets the conditions concerning the region, origins and quality. Only they may introduce such products with registered name on the internal market⁴. A framework of Community rules on a system of protection permits the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework ensures fair competition between the producers of products bearing such indications and enhances the credibility of the products in the consumer's eyes. The contested regulation applies as much to all producers legally authorized to use certain name, as it does to all those – now and in the future (where appropriate, after expiry of the transitional period – who are not authorized to use that name. The registration procedure covers a certain name, which can consist of some elements. Thus each element is covered by the legal protection. Such was a finding of the Advocate General Jan Mazak in a case Commission of the European Communities versus Federal Republic of Germany (no C-132/05)⁵. This case concerned the use of name “Parmesan”, by German producers. The name was a literal translation of Italian “Parmigiano Reggiano”. On that base it was understood as infringements of Council Regulation... [2081/1992].

The protection afforded by this Regulation, subject to registration, should be open to the geographical indications of third countries where these are protected in their country of origin. The registration procedure should enable any natural or legal person having a legitimate interest in a Member State or a third country to exercise their rights by notifying their objections.

The geographical indications are a part of the intellectual property law [Skubisz 2004]. As it was mentioned by Kapała they constitute subjective law of each entrepreneur, who obtains them on the certain geographical area if he passes the conditions in the specification [Kapała 2007]. The general provisions of availability, gaining, the scope of use, holding and inquiry are determined in Agreement on Trade Related Aspects of Intellectual Property Rights – TRIPS from 1994 [Calka 2002]⁶.

The registered names are protected against:

- any direct or indirect commercial use of a registered name 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 in so far as using the name exploits the reputation of the protected name;

⁴ See Order of the Court of First Instance of 11 September 2007 no T-35/06 – Honig-Verband v Commission.

⁵ Judgment Of The Court (Grand Chamber) of 26 February 2008.

⁶ See annex 1C to agreement setting the World Trade Organization.

- any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation” or similar⁷;
- 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 product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- any other practice liable to mislead the consumer as to the true origin of the product [Art. 13 Council Regulation... 510/2006].

In assumption it must be said that national law enables Polish producers to take full advantage of the possibilities to protect and register regional products. Each party, if follows the production conditions is entitled to register a name of the products that enter the market.

Besides that, the registration procedure is long, and AT each stage might be appealed. It influence on the number of Polish products that have been registered. As it was mentioned earlier, till now there are only two Polish products that are protected “Bryndza Podhalańska” and “Oscypek”. However another 16 of them are assigned on the temporary national list and they expected to be registered soon. Among them there are: podkarpacki miód spadziowy, andruty kaliskie, kiełbasa lisecka, wiśnia nadwiślańska, wielkopolski ser smażony, miód z Sejneńszczyzny, truskawka kaszubska, obwarzanek krakowski, miód kurpiowski, fasola korczyńska, redykołka, rogal Świętomarciński, suska sechłońska, lipiec białowiejski, karp zatorski, jabłka łąckie, miód wrzosowy z Borów Dolnośląskich [Kamińska 2007 b].

The described system of protection covers also duties after the registration. Thus each product is a subject of standards control in the matter of EN 45011 (Polish equivalent PN-EN 45011:2000). In Poland a body designed for such control is The Agricultural and Food Quality Inspection (IJHARS). All producers who want to confirm they fulfillment of certain conditions have to apply to the regional Office of the Inspection⁸. The additional protection of PGI and PDO are the official inspections of food. They might be carried out besides the IJHARS, by the Health or Veterinary Inspection. The aim of such controls is for example identification and elimination from the internal market all products which might be suspected of being copies or imitation products to the genuine articles or allusions to PGI or PDO.

In the case of the agricultural products and foodstuffs originating in the Community marketed under a name registered in accordance with analysed Regulation, all the indications shall appear on the labelling. From 1 May 2009 it will be obligatory for producers or traders to use the EU symbol, or the equivalent indication PDO and PGI on products that have been registered. These EU symbols provide guarantees of authenticity that the food products concerned are made in a specific region or use particular production methods and they are easy to recognise. Labels are vital, giving EU farmers and producers the possibility of higher returns in exchange for better quality, and giving consumers specific products that come with the guarantee of a certain production

⁷ Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to points (a) or (b) in the first subparagraph.

⁸ Such a control might be made also by the designer private units.

method and enable to gain some financial support from the European Agricultural Fund for Rural Development. It has been anticipated in Council Regulation... [1698/2005] on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [Nie tylko... 2008].

According to Art. 32 of Council Regulation... [1698/2005] each producer who complies with precise criteria may participate in food quality schemes. For such a support might apply a farmer who has entered the registration of producers, evidence of farms, evidence of application for payments, whose products meet the criteria of the system of PGI and PDO [Kamińska 2007 a]. Currently the financial aid equals 3200 PLN, and will last for next five years.

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SYSTEM CHRONIONYCH NAZW POCHODZENIA I OZNACZEŃ GEOGRAFICZNYCH PRODUKTÓW ROLNYCH

Streszczenie. Celem artykułu jest określenie kształtu prawnej ochrony oznaczeń geograficznych oraz nazw pochodzenia produktów rolnych i środków spożywczych w świetle obowiązujących przepisów prawa. Ochrona zostaje zastrzeżona na rzecz określonych producentów rolnych, których produkty spełniają wymogi w zakresie obszaru geograficznego, pochodzenia oraz jakości. Tylko oni mogą wprowadzać te produkty do obrotu pod zastrzeżoną nazwą. Zarejestrowanie oznaczenia lub nazwy pochodzenia nie tylko przyczynia się do wzmocnienia jego renomy, poprawy konkurencyjności na rynku, lecz także umożliwia uzyskanie pewnych środków finansowych z Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich.

Słowa kluczowe: chronione oznaczenie geograficzne, chroniona nazwa pochodzenia, lista tymczasowej ochrony krajowej, specyfikacja produktu

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