

INDICATIVE SIGNS - STANDARD OF QUALITY AND ORIGIN OF PRODUCTS IN THE EUROPEAN UNION

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Abstract

The study proposes an analysis of the main signs that define the quality, origin and production methods of food products and not only those that are regulated and protected in the European Union.

After clarifying the notion of indicative sign, without entering the polemic regarding their legal nature, the importance of indicative signs will be highlighted and the definitions for each of these signs will be analysed in light of the international treaties and regulations at European Union level, in order to highlight the legal regime of each of them, the similarities and differences between them and to conclude on the importance of their protection in the European Union.

Keywords: *geographical indications, designations of origin, names of traditional specialties guaranteed, mountain product, generic indications, indicative signs.*

1. Introduction

In the current competitive environment, in the context in which producers seek to promote their products and attract customers, it is undeniable that the origin, production method and environment in which the production takes place, offer many alternatives to the consumer, so that the symbols prove to be a determining factor in the choice, hence the importance of their protection at international, European and national level.

It is noteworthy that in recent years, there has been a tendency of consumers around the world to appreciate agricultural products the origin of which is determined, due to the fact that it bears a clear imprint of the area and conditions from which they come, hence the preference to consume new products with a history, a tradition, a specific form of processing and a special taste.

In the context of the globalized economy and the expansion of trade, the range of products offered to the consumer is wide and varied. In order to make a conscious choice about the characteristics of a product, it is imperative that those who are in this situation be able to perceive and compare information on the price, characteristics and qualities of an increasing number of goods.

However, the price or the basic characteristics of a product may not always be the only element on which

consumers base their decisions, but also the authenticity of the product, a context in which it is necessary to give precedence to the label of the product that benefits from "added value".

Therefore, in the doctrine¹, it has often been stated that the origin of a product is an important element in the world trade, a very early attention being paid to the establishment of rules in a broad framework, the only one able to provide effective protection against unfair practices.

The studies² show that the region of origin has an indirect impact on consumer preferences that value the geographical origin of agri-food products, as they perceive the geographical origin as an indicator of quality and analyse it along with other available product information.

2. Content

2.1. The concept of indicative signs

The concept of an indicative sign should take shape and be differentiated in terms of protection, in the context of the case law of the CJEU which has often sanctioned the direct or indirect commercial use of a registered name for products not covered by registration if the products in question are comparable to those registered under that name or if such use exploits the reputation of the protected name and prevents any misuse, imitation or evocation, even if the

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¹ Romain-Prot V., *International protection of signs of agri-food quality*, these law, Nantes, 1997, p. 661; Lorvellec L., *Recent Aspects of the International Protection of Controlled Designations of Origin*, Melanges Burst, Paris, Litec, 1997, pp. 311-340; Rochard D., *La protection internationale des indications géographiques*, these droit, Poitiers, 1999, p. 594.

² In 1999, a study conducted in the European Union on 20,000 consumers on the purchase of products with a geographical indication found that the main motivation for purchasing for 37% of respondents was the guarantee of origin, for 35% was the expectation of a guaranteed quality, for 31% it was a determined place of production and production method and for 16% it was a tradition. Moreover, 51% of respondents were willing to pay between 10% and 20% more for a product with a geographical indication than for a similar product that does not have a geographical indication.

true origin of the products or services is indicated or if the protected name is translated or accompanied by words such as „gender”, „type”, „method”, „as prepared at/in”, „imitation” or other similar words, including when those products are used as ingredients.

The term indication has, among other things, the meaning of „information” or „indication”, and according to an opinion³, the use of the term to establish the meaning of the expression „geographical indications” is scientifically incorrect, in practice, the „indications” are explained by themselves, and not by their particular aspects.

It has been shown⁴ that in order to have a correct distinctive and informative value, the geographical sign used must refer to a set of factors which may lead to identical qualities for the products so named. For example, for a noble wine, homogeneous, soil, subsoil, sun and rainfall comparisons are required.

On the other hand, as far as the name „Bordeaux” is concerned, this name has been a regional specificity for a long time, but now it is facing a certain diffusion in the neighbouring regions and even far beyond, up to Central Europe, in vineyards in reconstitution⁵.

In French⁶ law, it has been shown that the rights to distinctive signs do not have as their object a creation of the mind itself, but a sign having as its object, or even sometimes only with effect, to identify the products or services or activities of an economic operator in order to distinguish them from those of another. According to Jerome Passa, only the trademark falls into this category, because, although there are other types of distinctive signs, they are not strictly subject to a right and therefore cannot be qualified as industrial property rights in the strict sense.

As regards the character of the indicative sign, the name „Cassevert” is relevant, considering⁷ that when the owner of the Cassevert estate stipulated at the time of its sale that he reserved the use of the name and trademark „Cassevert”, the place name being entered in the cadastral matrix, so such a name could not be used to design wines other than those coming from that place.

In its case law, the Court of Justice of the European Union has established that there is a guaranteed geographical indication, designation of origin or traditional specialty only when a connection has been established in the minds of the public between

the place of manufacture and characteristics related to either geographical factors or human factors; the recognized quality of the product being attached to the raw material supplied by a given region or country or even to the manufacturing processes whose value has been found over the years devoted to their practice by many producers concentrated in the same geographical area.

In doctrine⁸, it has been argued that the designation of origin is not a mere indication of source; a certain idea of originality and quality is attached to it. Therefore, it is necessary to take into account in the designation of origin not only the geographical origin of the product but also certain specific qualities which constitute its originality, in other words the thesis that the idea of origin is not separated from the idea of quality is supported.

The quality of a product is related to a shape, given by the functionality or the manufacturing process; a specific origin of a product has *a priori* nothing to do with its quality. Indicating where a product comes from is objective information that can be provided to a consumer. This indication may be sufficient to motivate the consumer to buy⁹.

That is why the Belgian legislator created the concept of 'product of differentiated quality', which is defined¹⁰ as 'an agricultural product or foodstuff which is distinguished from a standard product which serves as a reference on the market by differentiating its mode of production or by a qualitative added value on the finished products and obtained in accordance with the agreed specifications'¹¹. In other words, a product that is of interest through a number of identifiable characteristics related to its production or processing process, in accordance with the specifications in the specification conditions.

2.2. Indicative signs - standard of origin and quality

Due to the growing level of trade liberalization, including trade of agricultural and food products, trade between Member States of the European Union and third countries is becoming increasingly important in this context, the Union having, naturally, the role to promote the high quality standards of EU agricultural products and to encourage joint promotion programs

³ Teodor Bodoaşcă, Andrei Murgu, *Aspects regarding the legal protection of geographical indications*, Romanian Journal of Intellectual Property Law no. 1/2018.

⁴ Olszak Norbert, *Droit des appellations d'origine et indications de provenance*, Tec & Doc Lavoisier Publishing House, Paris, 2001, p. 50.

⁵ Roudie P., *Did you say „castle”?*, *Essay Bordelais*, *Anneles de Geographie*, no. 614-615, July 2000, pp. 415-425.

⁶ Passa, J, *Property Law industrielle*, LGDJ, Lextenso Editions, Paris, 2009, p. 2.

⁷ Cass. Com., Jan. 18, 1955, JCP, 1955, II, 8755, note Live J.

⁸ Tallon Alex, *Les appellations d'origine*, Larcier Publishing House, Bruxelles, 2016, p. 66.

⁹ *Idem*, p. 12.

¹⁰ The notion of „differentiated quality product” was first introduced in Belgium by the Decree of 19 December 2002 on the promotion of agriculture and the development of differentiated agricultural products.

¹¹ Tallon A, *op. cit.*, p. 41.

involving more than one Member State or more than one agricultural sector.

At the same time, it is necessary to provide for actions to enhance the authenticity of Union products in order to improve consumers' knowledge on the quality of genuine products in relation to imitations or counterfeit products.

It should be noted that information and promotion actions in favour of Union co-financed agricultural products are not specifically targeted at their specific origin. However, the indication of origin may have a leverage effect in promotional activities, especially in third countries.

The designation of origin is defined in art. 5 (1) of Regulation (EU) no. 1151/2012 as the designation which identifies a product originating in a particular place, region or, in exceptional cases, country, the quality of which or whose characteristics are mainly or exclusively due to a certain geographical environment with its own natural and human factors and whose production stages take place in the delimited geographical area.

However, the Regulation also provides derogations from those set out in art. 5 para. 1, stipulating in para. 3 that, without prejudice to the first paragraph, certain names are assimilated to designations of origin even if the raw materials of the products concerned come from a geographical area greater than or different from the defined geographical area, provided that: the production area of the raw materials is delimited, there are special conditions for the production of raw materials, there are control measures to ensure raw materials and the existence of special conditions for the production of raw materials.

Thus, in order to assimilate to designations of origin the names of products whose raw materials come from a geographical area greater than or different from the defined geographical area, the three conditions listed above must be met cumulatively, in addition to which it is necessary that the names have been recognized as such in the country of origin before May 1, 2014.

The geographical indication is defined by art. 5 para. 2 of Regulation (EU) 1151/2012, as a name that identifies a product originating in a certain place, region or country; where a certain quality, reputation or other characteristic may be attributed mainly to the geographical origin of the product and where at least one of the stages of production takes place in the defined geographical area.

It is noted that the Community legislator did not stipulate derogations in the case of geographical indication such as those established by art. 5 para. 3 of the Regulation in the case of designations of origin, but

this aspect was not necessary in the context where in the case of geographical indication it is sufficient that at least one of the production stages to take place in the delimited geographical area.

The role of the geographical indication is to serve to „identification of a product”, which aims to distinguish this product from other products of the same kind, being a sign applied to products that have a certain geographical origin, which have qualities or a reputation due to this place of origin.

In addition, in order to be considered a geographical indication, the sign in question must make it possible to identify a product originating in a particular place. The quality or reputation of the product must be mainly due to the place of origin. As quality is a function of the geographical place of manufacture or production, there is a link between the product and its original place of production or manufacture.

Agricultural products generally have qualities derived from the place where they are produced and are influenced by certain local geographical factors, such as climate and soil, so it is not surprising that most geographical indications, in countries, refer to agricultural products, food products, wine and spirits.

However, the use of geographical indications is not limited to agricultural products. These indications may also highlight the particular qualities of a product due to human factors present at the place of origin of the product, such as certain techniques and manufacturing traditions.

The geographical indication actually provides a precision on the geographical origin of a product, a choice that in theory may seem obvious, but in practice recognizes some nuances.

The geographical indication can characterize a product if the term used allows it to be correctly related to geography, so if it has a certain geographical quality¹². This precision is given by the vocabulary, but in many cases it can also be given by non-verbal signs, by emblems, even by a characteristic shape of the container or the product itself.

It should be mentioned that a geographical indication or designation of origin which is no longer understood by the population of a Member State as indicating the special origin of a product, but which indicates a certain type or category of product, may cease to operate as an indicative sign.

The transformation of a geographical indication or a designation of origin into a generic term may take place in different countries and at different times. This can lead to situations where a particular indication is considered to be a geographical indication in certain

¹² Olszak Norbert, *op. cit.*, Tec & Doc Lavoisier Publishing House, Paris, 2001, p. 15.

countries (most often in the country of origin), while being considered a generic term in other countries.

The issue of generic geographical indications is the subject of much controversy and debate, with problems arising when products are marketed under a certain indication which is understood differently in different countries, a situation in which a fair balance must be found between the interests of consumers and producers from countries in which it is considered that the geographical indication indicates the geographical origin and particular qualities of a product, on the one hand, and those of producers and consumers in countries where this geographical indication has become a symbol of a kind of products and can be used freely by anyone.

Thus, art. 41 of Regulation (EU) no. 1151/2012 stipulates that, without prejudice to art. 13, the use of terms which are generic in the Union shall not be affected, even if the generic term is part of a name which is protected under a quality system.

The Regulation also sets out the conditions under which it may be considered whether or not a statement has become generic, indicating that all relevant factors will be taken into account, in particular: the existent situation in the consumption areas, relevant regulations at national or Union level.

2.3. Optional quality statements

Regulation (EU) no. 1151/2012 established a system of optional quality claims which aims to facilitate the communication in the internal market by producers of characteristics or properties which add value to agricultural products but which it does not refer to their particular geographical origin.

Thus, the following may constitute optional quality statements those that meet the criteria established by art. 29 of the Regulation, namely: the reference refers to a characteristic of one or more categories of products or to a property of agricultural production or processing that is applied in certain fields; the use of the word adds value to the product compared to similar products and the word has a European dimension.

In other words, these terms, at European level, must meet the following criteria: the term refers to a characteristic of one or more product categories or to a production or processing property that applies to specific areas; the use of the statement adds value to the product compared to comparable products and the statement has a European dimension.

Excluded from this system, according to art. 28 of the Regulation, are optional quality statements which describe the technical qualities of the product for the purpose of applying mandatory marketing standards

and which do not have the role of informing the consumers about those qualities of the product.

At the same time, optional quality statements exclude optional reserved terms that support and complement specific marketing standards, established by sector or product category.

Pursuant to Regulation (EU) no. 1151/2012, the Commission is empowered to adopt delegated acts in accordance with art. 56 of the Regulation in order to reserve an additional optional quality statement and to establish the conditions for its use and to take into account customer expectations, scientific and technical progress, the market situation and developments in marketing and international standards.

On the other hand, Member States may maintain national rules, but only for optional quality terms which are not covered by the Regulation and provided that such rules comply with the Union law.

Thus, in the category of quality mentions can be included the traditional specialties guaranteed, products from island agriculture, mountain product, quality labels, products from organic agriculture.

Regulation (EU) no. 1151/2012 establishes a system for traditional specialties guaranteed, the aim of which is to protect traditional production methods and recipes by supporting producers of traditional products in their marketing and consumer information activities with properties that add value to their traditional recipes and products.

According to art. 18 (1) of Regulation (EU) no. 1151/2012, a name is eligible to be registered as a traditional specialty guaranteed when it describes a specific product or food that: results from a production process, processing or a composition which corresponds to traditional practice for the product or food in question or is produced from traditionally used raw materials or ingredients.

It is noted that in the case of traditional specialties guaranteed what is essential is that the name describes a specific product or food that is either the result of a production process, processing, or the result of a composition that corresponds to traditional practice or is produced from raw materials or ingredients used in the traditional way, without being altered by other factors.

In other words, a guaranteed traditional specialty name does not refer to an origin but aims to highlight a traditional composition or a traditional mode of production.

The guaranteed traditional specialty name certifies the continuous use, from one generation to the next, of certain raw materials and ingredients in the product that has added value, highlights traditional aspects, such as how the product is manufactured or its composition, without linking it to a certain geographical area, in other words, a product registered

as a traditional specialty guaranteed protects it against counterfeiting and misuse.

Aware of the depopulation of mountain areas and in order to encourage the consumption of mountain products, the European Union has created, by adopting Regulation (EU) no. 1151/2012, a new statement of optional quality, called „mountain product”.

The potential for the development of food products in the mountain area is very high, as they have special qualities related to the region of origin, as well as traditional production and processing methods.

The mountain product is a quality scheme, recognized at European level, which gives mountain products a special place on the market.

The term offers the recognition of these products and a new opportunity for both producers and processors, as well as for consumers.

Mountain farms are a key contributor to food security, providing consumers with high-quality, diversified products that enhance the vitality of the mountain rural economy.

By creating this statement of optional quality, the European Commission wanted to avoid the abusive use of the term "mountain" and to regulate the fact that the product that obtained the right to use this statement is verified and certified as being from the mountain area.

As such, the term „mountain product” is established as an optional quality statement and is attributed to products intended for human consumption, in which case: the raw materials but also the feed for farm animals come from mountain areas; in the case of processed products, processing also takes place in the mountain areas, conditions which are stipulated by art. 31 of Regulation (EU) no. 1151/2012.

Thus, in order to benefit from the right to use the word „mountain product”, the agri-food product must meet the conditions laid down in art. 31 of Regulation (EU) no. 1151/2012, those provided by the Delegated Regulation (EU) no. 665/2014 and those provided for in the specific procedure developed by each Member State.

It can get the statement of optional quality the „mountain product” obtained from mountain animals and which are processed in these areas, products obtained from animals raised in at least the last two thirds of their life in mountain areas, if the products are processed in these areas, products obtained from transhumant animals, a quarter of life in transhumance and grazed in mountain pastures, bee products, if bees collected the nectar and pollen only in mountain areas, products of plant origin, only if plants are grown in mountain areas.

With regard to processing operations outside the mountain areas, a derogation was allowed, namely that

the slaughter of animals, the cutting and boning of carcasses may take place outside the mountain areas, provided that the distance from the mountain area concerned does not exceed 30 km.

From the perspective of the advantages it offers, it is obvious that the consumption of mountain products contributes to the maintenance of traditional agricultural activities in the mountain area, to the development of mountain households, as well as to the maintenance of the population in mountain areas.

In its case law, the CJEU has observed that a national regulation, which concerned the general name of „mountain” and „Monts de Lacaune” and which confines itself to granting general protection to a name which evokes among consumers qualities related to the origin of products in mountain areas is too far removed from the material object of Regulation no. 2081/92 for the latter to oppose its maintenance¹³.

Mountain areas within the Union are areas delimited within the meaning of art. 18 (1) of Regulation (EC) no. 1257/1999, and as regards products from third countries, mountain areas shall include areas officially designated as mountain areas by the third country or which meet criteria equivalent to those laid down in art. 18 (1) of Regulation (EC) no. 1257/1999.

Thus, art. 18 of EC Regulation no. 1257/1999 defines mountain areas as those areas characterized by a considerable limitation of land use possibilities and a significant increase in the costs of their exploitation due to: the existence, due to altitude, of very difficult climatic conditions, which have the effect of substantially reducing the growing season; the presence, at a low altitude, on most of that surface, of slopes which are too steep for the use of machinery or which require the use of very expensive special equipment or a combination of these two factors, where the difficulty of each factor taken separately is less serious, but by combining them an equivalent difficulty arises.

Of course, in duly justified cases and in order to take account of natural constraints affecting agricultural production in mountain areas, the Commission is empowered to adopt delegated acts laying down derogations from the conditions of use, in particular setting out the conditions under which non-mountain raw materials or fodder are allowed, the conditions under which the processing of products is permitted outside mountain areas, in a geographical area to be defined, the definition of that geographical area and the establishment of production methods and other relevant criteria for the application optional quality statements.

¹³ CJEU, 7 May 1997, Joined Cases C-321/94, C-322/94, C-323/94 and C-324/94, M. Pistre, M. Milhau, M. Oberti, Ms Barthes.

A mountain product will be seen by the buyer as a product of superior quality, with a recognized origin, obtained from an area with a low degree of pollution, so that when he takes off the product from the shelf with the logo „mountain product” must be assured that the product in question is indeed a product made in the mountains, from raw material from the mountain area.

The term „mountain product” is recognized at European level and supports both producers to encourage them to certify their products and help them to communicate their characteristics and properties on the market, which add value to their agricultural products, as well as support for consumers, to gain their trust, to provide them with a guarantee for consumption, as well as to facilitate the identification of quality products.

3. Conclusions

Indicative signs of agricultural products and foodstuffs are marketing tools especially for producers trying to market their products for the first time and give them the guarantee that the consumer's choice is made in full knowledge of the facts, especially in terms of origin, authenticity and qualities of those products.

In other words, the indicative signs guarantee to consumers that a particular product is manufactured in the region of origin and that it uses the production method and technique from that region.

According to a study¹⁴ published on April 20, 2020 by the European Commission, agri-food products and beverages protected by the European Union as „geographical indications” represent a sales value of 74.76 billion euros.

More than a fifth of this amount comes from exports outside the European Union. The study found that the value of sales of a product with a protected name is, on average, twice as high as for similar products without any certification.

European food products have a reputation for being safe, nutritive and of high quality, and the traditional production methods contribute to the EU's goal of becoming the global standard for durability into the food production.

According to the study, there is a clear economic advantage for producers in terms of marketing and sales

growth due to the outstanding quality and reputation of these products and the fact that consumers are willing to spend to obtain genuine products, with a significant increase in certified products sales, which is, on average, twice the value of the sale of similar products without any certification.

In this context, the study shows that geographical indications and traditional specialties guaranteed together accounted for an estimated sales of € 77.15 billion in 2017 and 7% of total sales of food and beverages in Europe, estimated at € 1.101 billion in 2017. Wines accounted for more than half of this value (€ 39.4 billion), agricultural products and food 35% (€ 27.34 billion) and spirits 13% (€ 10.35 billion). Of the 3,207 product names registered in 2017 (both GI and TSG), 49% were wines, 43% agri-food products and 8% spirits.

Also, the study concludes that every country from the Union European produce and launch on the market products of which designations are protected at EU level and serving as emblems for traditional culinary heritage of the regions and as business vectors for the national agri-food sector and that the geographic indications represents 15.5% of all agri-food products exports of the EU.

It is obvious that in the process of choosing the product on the market, both producers and consumers seek a benefit, on one hand, there is a net economic advantage for producers in terms of promotion, marketing and sales growth, due to the outstanding quality and reputation of these products and on the other hand, the consumer is guaranteed to be able to distinguish between safe, nutritious and high-quality food when he is put in a position to choose.

Indicative signs are clearly relevant for agricultural products and foodstuffs, for wines and other alcoholic beverages, if their geographical origin is linked to qualities due to either soil or climate or a combination of natural factors and traditional processing methods, deeply rooted in the traditions of local communities.

These aspects lead us to qualify the indicative signs as a symbol of official certification of geographical origin, traditional knowledge and authenticity, a „standard” of the quality of products that have added value.

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¹⁴ The study can be consulted at <https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/evaluation-policy-measures/products-and-markets/eco-values-gis-tsg-en>.

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