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**The Definition and Cancellation Conditions of Protected
Geographical Indications and Protected Designations of Origin
According to the Regulation (EU) No 1151/2012 of the European
Parliament of the Council of 21 November 2012 on Quality Schemes
for Agricultural Products and Foodstuffs**

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The Definition and Cancellation Conditions of Protected Geographical Indications and Protected Designations of Origin According to the Regulation (EU) No 1151/2012 of the European Parliament of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs

Dr.Didem Özgür

Abstract

Geographical indications and designations of origin on agricultural products and foodstuffs are protected according to the Regulation (EU) No 1151/2012 (Regulation). The definitions of geographical indications, designations of origin and the cancellation conditions of protected geographical indications and protected designations of origin are one of the controversial issues of the recent regulation.

The aim of the paper is to analyze the definition of geographical indications and designations of origin and the cancellation conditions of protected geographical indications and protected designations of origin.

The conclusion is composed of ideas and recommendations about the definition and cancellation of protected designations of origin and protected geographical indications.

Keywords: Protected Designation of Origin, Protected Geographical Indication, Cancellation of Protected Designation of Origins, Protected Geographical Indications

JEL classification: K33

1. Introduction:

Geographical indications and designations of origin on agricultural products and foodstuffs are protected according to the Regulation (EU) No 1151/2012 of the European Parliament of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs¹. The regulation entered into force on 3rd January 2013. The aims of the regulation are to respect for intellectual property rights, integrity of the internal market, to give reliable information to the consumers about the quality, origin of the agricultural products, foodstuffs, to ensure fair competition for farmers and producers of agricultural products and foodstuffs having value adding attributes, characteristics. The aim of the new regulation is to simply the registration

¹ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on Quality Schemes for Agricultural Products and Foodstuffs, OJL 343, 14.12.2012.

procedure to protect the registered names from misuse, imitation or evocation not to mislead the consumers about the true origin of the product. The aim of the regulation is also to catch European Union's 2020 strategy priorities, to secure fair prices for procedures.

Geographical indications constitute the main pillar of the European Union's quality policy on agricultural products.

The total sales value of agricultural products and foodstuffs under geographical indications was 15.8 billion Euro in 2010.

With a total sales value around €1 billion in 2010, protected designation of origin, protected geographical indication agricultural products and foodstuffs represented about 2% of the total value of extra-European Union (EU) food exports (€57 billion according to COMEXT), including 63% of protected designations of origin and 37% of protected geographical indications. (Chever, Renault, Renault, Romieu:2012, 62).

Protected designation of origins and protected geographical indications on agricultural products and foodstuffs play an important role EU's economy, rural development.

In this paper I will concentrate on definition of designations of origin, geographical indications and the cancellation conditions of protected designation of origin and protected geographical indication according to the regulation.

2. Definition of Designation of Origin and Geographical Indication:

According to the Article 5.1 of the regulation "designation of origin is a name which identifies a product originating in a specific place, region or, in exceptional cases, a country; whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural or human factors; and the production steps of which all take in the defined geographical area". The product has to have strong connection with the geographical area. In the Regulation production steps mean production, processing, or preparation and all of these stages have to be taken in the defined geographical area of the product. Natural or human factors also play a vital role in determining the quality of the product. These natural or human factors are climate, soil, microclimate, slope, environment, technical know-how, traditions, local customs, geography, geology. (Barham:2003, 135).

According to the Article 5.3 of regulation "certain names shall be treated as designation of origin even though the raw materials for the products concerned come from a geographical area larger than, or different from, the defined geographical area, provided that.

- a) the production area of the raw materials are defined;
- b) special conditions for the production of the raw materials exist,

- c) there are control arrangements to ensure that; the conditions referred to in point (b) are adhered to, and
- d) the designations of origin in question were recognized as designations of origin in the country of origin before 1 May 2004.”

Only live animals, meat and milk may be considered as raw materials.

In the first article of the Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 Supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the Establishment of the Union Symbols for the Protected Designations of Origin, Protected Geographical Indications and Traditional Specialities Guaranteed and with Regard to Certain Rules on Sourcing, Certain Procedural Rules and Certain Additional Transitional Rules² (Regulation No 664/2014) “For the purposes of Article 5 of Regulation (EU) No 1151/2012, feed shall be sourced entirely from within the defined geographical area in respect of products of animal origin the name of which is registered as a protected designation of origin.

Insofar as sourcing entirely from within the defined geographical area is not technically practicable feed sourced from outside that area can be added, provided that the product quality or characteristic essentially due to the geographical environment are not affected. Feed sourced from outside the defined geographical area shall in no case exceed 50% of dry matter on annual basis.”

It is criticized that if there has to be a strong link with the production area and the product why the raw materials can be sourced from a geographical area larger than, or different from, the defined geographical area (Blakeney:2014, 51-52).

In the Article 5.2 of the regulation states that “geographical indication is a name which identifies a product originating in a specific place, region or country; whose given quality, reputation or other characteristic is essentially attributable to its geographical origin and at least one of the production steps of which take place in the defined geographical area.” Quality, reputation or other characteristic are on their own sufficient conditions to be protected as a geographical indication. (Rangnekar:2004, 10). Quality is a subjective term that depends on people’s appreciation. According to World Intellectual Property Organisation (WIPO) the term “quality” appears less to imply a certain quality of the product—qualitative criterion—than a characteristic—legal criterion, which allows the distinguishing of the product based on its geographical origin. The quality of a product may be established on the basis of a precise

² Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 Supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council with regard to the Establishment of the Union Symbols for the Protected Designations of Origin, Protected Geographical Indications and Traditional Specialities Guaranteed and with Regard to Certain Rules on Sourcing, Certain Procedural Rules and Certain Additional Transitional Rules, OJL 179, 19.6.2014.

description of the product or on the method for obtaining it. Reputation is also a sufficient feature of a product to be qualified to be protected as a geographical indication. Reputation is based on the distinctive character of the product. Reputation is also closely linked the history and historical origin of the product. Local reputation is a sufficient to be protected as a geographical indication. (SCT:Geographical Indications, 2003), (Dagne:2014, 147-148).

Other characteristic refers to any feature that contributes to the typicality of the product. These features are natural and human factors. Natural factors are soil, climate, geographical area, soil on the other hand human factors are technical know how, traditions, customs. (Gragnani: 2013, 378).

In order to be protected as a geographical indication only one production step can take place in the defined geographical area which means that raw materials of the product can originate from different geographical places than the defined geographical area so geographical link is weaker than the designation of origin in geographical indications. (Vivien: 2013, 194).

Non geographical names can also be protected as geographical indications or designations of origins when compared with the previous Regulation so more products can be eligible for registration.

3. Cancellation Procedure and Conditions of Protected Geographical Indications and Protected Designations of Origin:

When geographical indications and designations of origin are registered they will be protected according to the rules of the regulation. Protected designations of origin or protected geographical indications may be cancelled by the Commission's own initiative or at the request of any natural or legal person having a legitimate interest if the compliance with the conditions of the specification is not ensured or where no product is placed on the market under the protected designation of origin or the protected geographical indication for at least seven years.

The Commission may at the request of the producers of product marketed under the registered name, cancel the corresponding registration according to the article 54/1 of the regulation.

According to the article 7 of Regulation No 664/2014 "Member States shall be allowed to submit a request for cancellation on their own initiative if compliance with the conditions of the specification is not ensured or where no product is placed on the market under the protected designation of origin or the protected geographical indication for at least seven years.

Cancellation of protected designation of origins and protected geographical indications because of market concern is not correct because the products may not be marked in the market but these products can still comply with the conditions of the specification.

Although it was stated that names that have not been used on the market for a reasonable amount of time could hinder the competition and third party rights (Gagnani:2013, 380) geographical indications are different from trademarks and other intellectual property rights in their nature. Geographical indications can not be renewed, transferred or assigned. Geographical indications can only be registered in the name of a producer group or organisation. These producer group or organisation must represent the producers of the products within the defined area. Geographical indications can not become generic when they are registered. (Caenegem:2003, 702). Geographical indications can not be cancelled because of non use like trademarks.

If protected designation of origin and protected geographical indications would like to be cancelled due to non-use on the market for at least seven years conditions of non-use and genuine use should be clarified by an implementing regulation.

It is not stated in Regulation No 1151/2012 whether protected designation of origin and protected geographical indication should be marketed in more than one EU Member State or is it enough to market the related agricultural product or foodstuff in the related national market or third country's market to justify the use requirement according to the regulation.

Even though there are not any clear conditions and there are some disputes for non-use and genuine use for national trademarks and Community Trade Marks it will be very hard to assess the conditions for non-use and genuine use for geographical indications.

There may be disputes for cancellation for non-use when a product was registered as a protected designation of origin or protected geographical indication from a third country when the related third country does not have a regulation about requirement of use in its national law and this third country's producer groups do not aware of the non-use condition for cancellation in Regulation No 1151/2012. What will happen this time?

Most of the agricultural products and foodstuffs are protected as protected designation of origin or protected geographical indication to preserve tradition, culture, to sustain rural development, and these products may have limited market share or they can be produced by small group of producers so to determine the market share and use of these products in the market what conditions should be considered in assessing the genuine use of protected designation of origins or protected geographical indications?

Another condition for cancellation is non compliance with the conditions of the specification. National authorities are responsible for establishing and maintainig systems for inspection and compliance. Member states and related third countries whose agricultural products and foodstuffs are registered as a protected designation of origin and protected geographical indication according to the regulation should have their inspection systems that are complying with EU

Standarts. These inspection systems should have necessary monitoring and compliance structures to ensure product specification (Evans:2012, 778).

Although Member States shall include a separate section on the checks related to agricultural quality schemes in their multi annual national control plans and the annual reports under Regulation (EC) No 882/2004³ the regulation does not contain minimum requirements like minimum coverage of checks, their frequency about official controls so control of compliance is left to the Member States' competence. (Özgür:2012,10). Some Member States can control the products more often while others can control less than other Member States. Third countries' authorities do not have to sent their control plans to the Commission so there can be differences between Member States and third countries' authorities while controlling the registered agricultural products and foodstuffs compliance with their specification. These non standartisation of control of compliance may cancel some countries' agricultural products and foodstuffs easily than other countries' agricultural products and foodstuffs.

4. Conclusion:

The new definitions of designation of origin and geographical indication are more compatible with TRIPs definition of geographical indications since non geographical names can also be protected according to the regulation.

Cancellation of protected designation of origin, protected geographical indication that are not placed on the market at least seven years is a not fair condition because geographical indications are registered without any time limit as long as the product complies with the conditions of the specification. Protected designations of origin and protected geographical indications should not be cancelled due to the market issues.

As the conditions of requirement of use were not stated in the regulation it will be difficult to determine the conditions for non-use and genuine use for geographical indications and the interpretation is left to national courts and European Court of Justice. In order to avoid disputes more clarification should be made to the use requirement of protected designation of origin and protected geographical indication in the market.

There are not any cancellation conditions present about non-use of protected designation of origin or protected geographical indication in the market both in Regulation (EC) No 110/2008 of The European Parliament and of The Council of 15 January 2008 on The Definition, Description, Presentation, Labelling and The Protection of Geographical Indications of Spirit Drinks and

³ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on Official Controls Performed to Ensure the Verification of Compliance with Feed and Food Law, Animal Health and Animal Welfare Rules, OJ L 191, 28.5.2004

Repealing Council Regulation (EEC) No 1576/89⁴ and in Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007⁵ so there is inconsistency between registered products' cancellation conditions in EU. This inconsistency should be avoided between in these related regulations.

There should be more standardization regarding the control of compliance between Member States and third countries to avoid the disparities between Member States and third countries' implementations about cancellation of protected geographical indications and protected designations of origin because of non compliance of the specification.

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⁴ Regulation (EC) No 110/2008 of The European Parliament and of The Council of 15 January 2008 on The Definition, Description, Presentation, Labelling and The Protection of Geographical Indications of Spirit Drinks and Repealing Council Regulation (EEC) No 1576/89, OJL 39, 13.2.2008

⁵ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJL 347, 20.12.2013.

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