New Regulation on the European protection system of geographical indications
What does it mean for Geographical Indications producers?

Introduction

Since 1992, names of some agricultural products and foodstuffs have been protected in the European Union by means of the EC Regulation 2081/92.

This Regulation created a two-category system of protected names: Geographical Indications and Designations of Origin, giving the holders of geographical indications the exclusive right to use the geographical name for products that comply with the registered specifications and prevent any direct or indirect commercial use of the protected name to comparable products.

The Regulation also provided an opportunity to register names from non-EC Member States subject to reciprocity and equivalency conditions. However, this provision of the Regulation was subject to the WTO dispute as it was challenged by the US and Australia, who claimed that the EC Regulation was inconsistent with the EC’s obligations under the TRIPs Agreement and GATT 1994. On 15 March 2005, a WTO Panel recognized the validity of the protection granted to geographical indications in the EC, but called on the European Union to clarify certain aspects of its legislation to allow producers from third countries to register their GI names in the EU.

On 20 March 2006, the Agriculture Council of the European Community adopted the Regulation 510/2006, on the protection of Geographical Indications (PGIs) and Designations of Origin (PDOs) for agricultural products and foodstuffs, replacing the EC Regulation 2081/92.

Common aspects of the new Regulation regarding EC products and third country products

Scope of protection

The new Regulation confers protection as Designations of Origin and Geographical Indications to certain agricultural products and foodstuffs, for which a link exists between product or foodstuff characteristics and geographical origin. However, its scope could be enlarged to encompass other agricultural products or foodstuffs.

So far, this Regulation does not cover the registration of non-agricultural products or industrial goods, such as textiles or glass. It does not apply either to wine-sector products (except wine vinegars) nor spirits drinks, which are covered by their own existing Community legislation. In the
food sector they do not apply to pre-cooked meals, prepared condiment sauces, soups and broths, ice cream and sorbets, chocolate (and other food preparations containing cocoa).

**Products subject to registration**

Under Regulation 510/2006, the following names can be registered in the EC:

- **As Protected Designation of Origin (PDO):** Names 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, the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area; Traditional geographical and non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfill these conditions can be also registered as PDOs.

- **As Protected Geographical Indication (PGI):** 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, 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 excluded from registration**

Under Regulation 510/2006, certain names are not suitable for registration:

- Names that have become generic;
- Names that enter into conflict with the name of a plant variety or an animal breed and as a result is likely to mislead the public as to the true origin of the product;
- Homonymous names which mislead the public into believing that products come from another territory, even if the name is strictly accurate as far as the actual territory, region or place of origin of the agricultural products or foodstuffs in question is concerned;
- Designations of origin or geographical indications, where, in light of a trademark's reputation and the length of time it has been used, its registration could mislead the consumer as to the true identity of the product protected by the trademark.

**Specific aspects of the new Regulation**

**A) New procedure to register European GIs**

1 Article 3.1 of the Regulation: a ‘name that has become generic’ 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.
Under the Regulation 510/2006, several aspects of the registration procedure of European GIs have been modified. Hereafter, you may find the rules to apply for registration of a GI product coming from a Member State in the EU register.

**Applicants**

Any group, meaning any association, irrespective of its legal form or composition, of producers or processors working with the same agricultural product or foodstuff, may apply for registration. Other interested parties may participate in the group. A natural or legal person may be treated as a group in accordance with detailed rules.

**Procedure**

*At national level*

Applications shall be presented to the relevant national authority of the EC Member State in which the geographical indication’s area is located.

The application shall include:

- The name and address of the applicant group.
- The specification, which includes the following documents:
  - the name of the agricultural product or foodstuff to be registered;
  - a description of the agricultural product or foodstuff, including the raw materials, if appropriate, and principal physical, chemical, microbiological and organoleptic characteristics of the product or the foodstuff;
  - the definition of the geographical area and, where appropriate, details indicating the raw materials coming from a geographical area larger than or different from the processing area;
  - proof of the link between the agricultural product or the foodstuff and the defined geographical area where it originates;
  - 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;
  - details bearing out the following:
    - the link between the quality or characteristics of the agricultural product or foodstuff and the geographical environment or,
    - the link between a specific quality, the reputation or other characteristic of the agricultural product or foodstuff and the geographical origin;
- 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;
- any requirements laid down by Community or national provisions.
Applications shall be examined by the national authorities of the Member State concerned, which will ensure that the applications meet the conditions of the EC Regulation.

During the examination period, Members States will initiate a national objection procedure, conferring a reasonable period within which any person having a legitimate interest and established or resident on its territory may lodge their objection to the application.

If the Member State considers that the requirements are met, it shall take a favourable decision, publishing and assuring electronic access to the specification on which the favourable decision is based.

The decision shall grant protection on a transitional basis at the national level only.

The Member State shall forward to the Commission a single document, dealt with at national level, containing the main points of the specification, such as name, a brief description of the product, specific rules concerning packaging and labelling, a definition of the geographical area from which comes the agricultural product or foodstuff; and proof of the link between the product and its geographical origin.

Member States may charge a fee to cover their costs, including those incurred in scrutinizing applications for registration, statements of objection, applications for amendments and requests for cancellations under this Regulation.

**At European Commission level**

After receiving the documents on the favourable decision of the Member State, the Commission will scrutinize by appropriate means the application received, in order to check that it is justified and meets the conditions laid down in the Regulation. This scrutiny will not exceed a period of 12 months.

The Commission will publish in the Official Journal of the European Union the single document and the reference to the publication of the specification.

Within the following six months from the date of publication, any Member State or third country may object to the registration, by sending a duly substantiated statement to the Commission. During this same period, any natural or legal person having a legitimate interest, established or resident in a Member State, may object to the registration through a statement sent to the competent authority of that Member State. Oppositions from the Member State in which the request originated will not be accepted.

Objections may be resolved by the conclusion of an agreement within six months or, if no agreement is reached, by Commission’s decision.
If no objection is made or the Commission received inadmissible objections, the name will be registered and entry in the European Register of Protected Geographical Indications and Designations of Origin, being published in the Official Journal of the European Union.

The Commission will maintain updated a register of registered GIs at EU level.

**Controls**

To use the registered name, products must comply with registered specifications.

Member States must designate the competent authority or authorities responsible for controls in respect of the obligations established by the Regulation in conformity with Regulation 882/2004. All GI operators must be covered by a system of official controls.

Members States will ensure that any operator complying with this Regulation is entitled to be covered by a system of official controls. The list of bodies in charge of the controls will be published and periodically updated by the Commission.

The cost of the verification of compliance with the specifications, in respect of the geographical indications and designations of origin relating to a geographical area within the Community, will be borne by the operators subject to those controls.

Product certification bodies will have to comply with and, from 1 May 2010 be accredited in accordance with European Standard EN 45011 or ISO/IEC Guide 65 (General Requirements for bodies operating product certification systems).

**Labelling requirements for EC names**

The use of Community symbols PDO / PGI or the indications “Protected Geographical Indication” and “Protected Designation of Origin” will be compulsory for European GI products as of 1 of May 2009.

**B) New procedure to register third country GIs**

The new Regulation allows producers from third countries to register their names in the European GI register, allowing for the protection of their products in the 25 Members States of the European Union! Hereafter, you may find the new rules to apply for registration of a GI product coming from a third country in the EU register.

**Applicants**

Any group, meaning any association, irrespective of its legal form or composition, of producers or processors working with the same agricultural product or foodstuff, may apply for registration.
Other interested parties may participate in the group. A natural or legal person may be treated as a group in accordance with detailed rules.

**Procedure**

**At European Commission level only**

Applications shall be directly presented by the applicants to the Commission of the European Communities located in Brussels (Belgium) or via the appropriate competent authority on the third country concerned (the GI regulatory authority in that country, Ministries of Agriculture, trademark offices).

The application shall include:
- The name and address of the applicant group.
- The specification, which includes the following information:
  - the name of the agricultural product or foodstuff to be registered;
  - a description of the agricultural product or foodstuff, including the raw materials, if appropriate, and principal physical, chemical, microbiological and organoleptic characteristics of the product or the foodstuff;
  - the definition of the geographical area and, where appropriate, details indicating the raw materials coming from a geographical area larger than or different from the processing area;
  - proof of the link between the agricultural product or the foodstuff and the defined geographical area where it originates;
  - 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;
  - details bearing out the following:
    - the link between the quality or characteristics of the agricultural product or foodstuff and the geographical environment or,
    - the link between a specific quality, the reputation or other characteristic of the agricultural product or foodstuff and the geographical origin;
- 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;
- any requirements laid down by Community or national provisions.
- a single document, containing the main points of the specification, such as name, a brief description of the product, specific rules concerning packaging and labelling, a definition of the geographical area from which comes the agricultural product or foodstuff; and proof of the link between the product and its geographical origin;
- And proof that the name in question is protected in its country of origin. Only those names that are already protected in the country of origin qualify for protection.
Applications shall be sent to the Commission in one of the official languages of the institutions of the European Union or accompanied by a certified translation in one of those languages.

After receiving the application, the Commission will examine it by appropriate means, in order to check that it is justified and meets the conditions laid down in the Regulation. This scrutiny will not exceed a period of 12 months.

Where the conditions laid down in the Regulation appear to be met, the Commission will publish in the Official Journal of the European Union the single document and the reference to the publication of the specification.

Within the following six months from the date of publication, any Member State or third country may object to the registration, by sending a duly substantiated statement to the Commission. During this same period, any natural or legal person having a legitimate interest, established or resident in a Member State may object to the registration through a statement sent to the competent authority of that Member State. As well, any natural or legal person having a legitimate interest, established or resident in a third country, may object to the registration through a statement sent directly to the Commission or via the authorities of the third country concerned. Objections may be resolved by the conclusion of an agreement within six months or, if no agreement is reached, by Commission’s decision.

If no objection is made or the Commission received inadmissible objections, the name will be registered and entry in the European Register of Protected Geographical Indications and Designations of Origin, being published in the Official Journal of the European Union.

**Controls**

To use the registered name, registered products must comply with registered specifications.

The applicant group must identify one or more bodies which will undertake controls to ensure that the specifications are met.

Product certification bodies will have to comply with and, from 1 May 2010 be accredited in accordance with European Standard EN 45011 or ISO/IEC Guide 65 (General Requirements for bodies operating product certification systems).

The public or private inspection bodies must offer adequate guarantees of objectivity and impartiality, and have at their disposal the qualified staff and resources necessary to carry out their functions.

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2 The European Union has 20 official languages: Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovene, Spanish and Swedish. It has also been decided to give Irish the status of an official language of the EU, with effect from 1 January 2007.
The cost of inspection must be borne by the operators subject to those controls.

**Labelling requirements for names from third countries registered in the EC**

The use of Community symbols PDO / PGI or the indications “Protected Geographical Indication” and “Protected Designation of Origin” will be optional for third country GIs registered in the EC.

**Level of protection of PDOs and PGIs in the EC**

The register of GI names from either Member States or from third countries in the EU register confers protection in all 25 Member States of the European Union, prohibiting:

- Any direct or indirect commercial use of the protected name;
- 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 similar;
- 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 public as to the true origin of the product.

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