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THE PROTECTION OF GEOGRAPHICAL INDICATIONS IN ROMANIA

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## I. HISTORY

1. Romania has a rich tradition in the field of industrial property, particularly in the field of marks. However geographical indications were given a specific legal regulation only in 1998, by adopting the law no. 84 on marks and geographical indications.

2. During this period, geographical indications / designations of origin / indications of provenance were indirectly protected by laws in specific legal rules of intellectual property.

3. In this situation, the protection of geographical indications / designation of origin or indications of provenance do not come through the recognition of an exclusive right, but actually by using the penalty for false indications of origin, or for counterfeiting a trade mark containing a geographical indication.

4. Since 1920, Romania is part of the Paris Convention for the protection of industrial property and the Madrid Arrangement. Romania is a signatory in 1958 of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, but unfortunately unratified until now.

5. Also, our country is part of the TRIPS agreement - WTO.

6. Lack of protection was expressly compensated therefore by the law of trademarks, the applicability of sanctions in criminal law and the existing regulations since the 1932 law on unfair competition.

7. Thus, the law no. 28/1967 on trademarks, although not expressly provide for the protection of geographical indications through registration, prohibited registration of marks that contain false or misleading indications.

8. However, the literature of that period consistently treated this category of signs, stressing the need to protect geographical indications, which were divided into two broad categories: indications of provenance and designations of origin.

9. By law on combating unfair competition was sanctioned the use of designations of origin in order to create confusion for consumers.

10. Also, art. 301 Criminal Code (in regulating both old and current version ) punish manufacture or putting into circulation of products bearing the designation of origin or false indications of origin in order to mislead the beneficiaries and this sanction may be accompanied by confiscation of misleading goods.

11. Other provisions are found in the vine and wine law in 1971, which established the level of quality wines and wines that could carry a designation of origin, setting and control of wines bearing the designation of origin.

## II. THE REGISTRATION OF A GEOGRAPHICAL INDICATION IN ACCORDANCE WITH LAW NO. 84/1998 ON PROTECTION OF TRADE MARKS AND GEOGRAPHICAL INDICATIONS.

12. In 1998, in the context of concerns for the return to spiritual matters of European legislation specifies, entered into force Law 84/1998 on trademarks and geographical indications and rules of law enforcement, which pays particular attention to this category of signs - the geographical indications.

13. Definition of the geographical indication by this law is fully consistent with that which provides TRIPS to being considered for all categories of goods that have a close relationship with the area in which they are produced. Thus, geographical indications are intended to inform consumers that a product has quality, reputation or other characteristics "to be" essentially attributable to their geographical origin.

14. To qualify for protection as geographical indications at the national level, according to Law no. 84/1998 in force today, a name must:

- Indicate a geographical area,
- Be a social product of this area,
- The product must have at least a quality, reputation or other characteristics that are essentially determined by the indicated area.

15. It is generic and can not be protected as a geographical indication the name of a product which, although it relates to the place or region in which it was originally manufactured, produced or marketed, has become the common name for a particular type of product.

16. By recording a geographical indication can not be considered that has become generic and will not fall into the public domain.

17. The recording procedure starts with the submission of an application for protection at the State Office for Patents and Trademarks, accompanied by documents to the effect that the name is a geographical indication, a specification, a certificate of compliance and legal fees.

18. Next stage is examining the application submitted, at which stage the Ministry of Agriculture and Rural Development is the competent authority certifying:

- Geographical indication of the product;
- Products which may be marketed under that indication;
- The geographical area of production;
- The characteristics and conditions of production that must meet the products to be marketed under that indication.

19. After acceptance of application for registration, geographical indication shall be published in the Official Gazette of Industrial Property, and within 3 months from the publication third parties have the opportunity to submit opposition. If within a period of 3 months there are not been introduced any opposition, State Office for Patents and Trademarks register the geographical indication in the National Register of Geographical Indications.

20. Right to use the geographical indication may not be subject to any submissions.

21. Also, in the spirit of the provisions contained in TRIPS, were regulated effective means of rights acquired on the geographical indications registered. Thus, Law no. 84/1998 criminalize the release of products bearing the geographical indication that indicates or suggests that the product in question is born from a geographic region other than the true place of origin in order to mislead the public regarding the geographical origin of the product.

22. Registered geographical indication may be subject to cancellation if violations are found regarding conditions for obtaining protection. In that case, competent in addressing requests for annulment, is a court of law.

23. Failure conditions for quality and specific characteristics of the area referred to the geographical indication, the Ministry of Agriculture or any interested person may request the Court Bucharest revocation of the rights of persons authorized by the State Office for Inventions and Trademarks to use the geographical indication registered.

24. Also, other national laws regulating aspects of commercial activities in Romania, contains provisions regarding the unlawful use of geographical indications. For example, Law no. 11/1991 on combating unfair competition which was amended in 2001, incriminates:

a) use of a geographical indication as to cause confusion with the legitimate use of another merchant;

b) in any way the production, import, export, storage, sale or offering for sale of goods / services bearing false mentions the marks, geographical indications, the origin and characteristics of goods, as well as the name of the manufacturer or dealer in order you mislead other traders and beneficiaries.

25. By using false statements on the origin of goods shall mean any indication of a nature to believe that the goods were produced in a certain place in a territory or in a particular state.

26. Also, according to art. 301 of the Criminal Code of Romania, the crime of unfair competition consists in manufacturing or circulation of products bearing the designation of origin or false indications of origin and apply on products made in terms of circulation false patent or the use of trademarks or trade names of organizations or industry, in order to mislead the beneficiaries.

27. From a statistical viewpoint, in Romania are protected under the provisions of Law no. 84/1998 33 geographical indications.

28. Also benefit from protection under the provisions of Law no. 84/1998 3 collective mark containing a geographical indication for food, and a number of about 80 marks containing geographical indications for wines and spirits.

### III. THE CURRENT SYSTEM OF PROTECTION OF GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN IN ROMANIA

29. Since 2007 Romania is a member of the European Union, so that from the date 01.01.2007 the Community regulations are directly applicable in the territory of our country.

30. For food and agricultural provisions are applicable:

- Regulation (EC) no. 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;

- Regulation (EC) no. 1898/2006 on the application of Regulation (EC) no. 510/2006;

31. At the national level, are applicable:
  - Government Decision no. 828/2007 which was established the national protection of geographical indications and designations of origin for agricultural products and foodstuffs.
32. The objective is the protection by registration of names; protection does not cover the product itself.
33. The goal is protection against any commercial use of names registered which would allow exploitation of reputation, misuse, imitation or evocation of origin, any false or misleading information on the provenance, origin, nature or essential qualities of the product, any other practice liable to induce consumer the error on the true origin of the product.
34. DOP - "designation of origin" can be the name of a region, a specific place or a country used to describe an agricultural product or foodstuff.
35. Product must be:
  - Originating in that region, specific place or country;
  - Quality or characteristics are due to geographical environment with its natural and human factors;
  - Raw materials used must come only from the defined geographical area;
  - Production, processing and preparation must take place only in the defined geographical area;
36. PGI - "geographical indication" can be the name of a region, a specific place or a country, used to describe an agricultural product or foodstuff.
37. Product must be:
  - Originating in that region, specific place or country
  - Possess a specific quality, reputation or other characteristics attributed to geographical origin
  - Raw materials used may originate from outside the defined geographical area;

- Certain operations of the production such as packaging, freezing, storage, etc. can take place outside the defined geographical area.

38. According to Government Decision no. 828/2007, the responsible authority for verifying the acquisition documentation for the protection of designations (PGI or PDO) is Ministry of Agriculture and Rural Development (MARD).

39. Also, Ministry of Agriculture and Rural Development has the responsibility of accreditation of private inspection and certification (according to European standard EN 45011) - for control and inspection specifications.

40. The certification of agricultural products or food is the procedure by which a inspection and certification body says that the product is authentic and accordance with the specification or technical specification or regulation on the production, processing, definition, description, presentation, labeling and marketing.

41. The authority for verifying the labeling market and use the logo is National Agency for Consumer Protection.

a) The National Agency for Consumer Protection has the following main attributions:

- monitor compliance with consumer protection laws related to security products and services and to protect the legitimate rights of consumers by making checks on the market from producers, importers, distributors, vendors, service providers and customs units, with access to where products are manufactured, stored or sold products or services that are provided and the documents relating thereto;
- Notes offenses and have measures to limit the consequences of manufacturing, importation, marketing or offering free products and services which do not comply with the laws of the activities of the Authority, applying sanctions and contraventional main components provided by law, before bodies prosecution often finds violations of criminal law;
- Coordinate the rapid exchange of information with institutions and bodies, national and international, of products and services that represent risk to the health and safety;

- Notify the institutions involved in the quality of products and services, based on their findings and information received from non-governmental organizations and the consumers, conformity of products and services for household consumption in relation to certification documents and suggest improvements or development of regulations in the field;
- monitor compliance with consumer protection laws related to security products and services and to protect the legitimate rights of consumers by making checks on the market from producers, importers, distributors, sellers, service providers, including financial services, and units customs, having access to places where it is produced, stored or sold products or services that are provided and the documents relating thereto, except controls hygienic and veterinary from producers for food;
- notes offenses and have measures to limit the consequences of manufacturing, importation, sale or offer of free food or food products and services that are not in accordance with the laws of the activities of the Authority, applying contraventional penalties provided by law, before the prosecution often finds violations of criminal law.

b) MARD Order no. 906/2007 which was covered:

- a procedure for registration and verification of documentation for obtaining protection of designations (PGI or PDO);
- a procedure for a declaration of opposition at national level (within 2 months from publication);
- a procedure for transmitting documents to the European Commission;
- specific model and use of the national logo.

42. MARD examines if documentation received is justified and meets the conditions laid down in the procedure of registration and verification of documentation for the acquisition of protection titles.

43. MARD publish documents on the ministry website in order to grant a period of 60 days which may indicate opposition to the request for registration.

44. On expiry of the opposition and transmitting the certificate of conformity of reality data contained in the specifications issued by the private inspection and certification, MARD registered the name in the National Register of geographical indications and protected designations of origin.



45. National logo will be used in order to identify the market designation (PGI / PDO) products which have granted national protection.
46. After gaining protection at Community level, national logo will be used together with the community logo.
47. National logo can be used for information purposes - advertising.
48. Protection of traditional specialties guaranteed
49. In a very close connection with the protection of geographical indications and the protection of the traditional specialties.
50. By Government Decision no. 134 of 2008 were established the authorities verifying documentation to obtain the protection of traditional specificity of an agricultural product or foodstuff and checking on the labeling and use of national logo.
51. Reality data contained in the specification is checked and certified by private inspection and certification of agricultural products or foodstuffs, in accordance with Council Regulation (EC) no. 509/2006.
52. Costs of verification and certification real data contained in the specification and the related compliance control specifications are met by the producers subject to question.
53. Ministry of Agriculture and Rural Development is the competent authority responsible for verifying the documentation to register a traditional specialties guaranteed protection and acquisition.
54. Ministry of Agriculture and Rural Development is the competent authority responsible for verifying and monitoring the activities of private inspection bodies and certification of agricultural products or food.
55. Checking on the labeling and use the logo or national specialties of the traditional community is guaranteed by the National Authority for Consumer Protection.
56. Documentation for registration of traditional specialties guaranteed protection for the acquisition, is submitted in paper and electronically on e-mail: [dopigp@madr.ro](mailto:dopigp@madr.ro).

57. If the documentation submitted is complete, it is published on the website of the Ministry of Agriculture and Rural Development, provision for a period of 60 days in which any individual or legal person concerned, which is established in the country, may oppose the application for registration.

58. After expiry of the opposition is guaranteed traditional specialty recorded in the National Register of traditional specialties guaranteed.

59. Traditional Specialty Guaranteed acquires protection nationwide on registering for the National Register of traditional specialties guaranteed to terminate on the date of acquisition of protection in the European Union.

60. National Register of traditional specialties guaranteed is administered by Department of Food Industry and is regularly published on the website of the Ministry of Agriculture and Rural Development.

61. Application for registration of traditional specialties guaranteed protection for the purpose of acquiring the Union, shall be forwarded within 30 days from the date of national protection.

62. The system of attestation of traditional products

63. Certification involves the recognition of a traditional product through its registration in accordance with legal provisions.

64. For close monitoring of registration, licensing and promotion of traditional and ecological Romanian products, which will be marketed on the domestic and international market, and also for and active promotion of traditional local specificity and providing an institutional framework to support producers, in April 2008 by Government Emergency Order no. 42/2008 was established the National Office of Traditional and Ecological Products Romanian subordinated MARD, which has the following objectives:

- To promote the concept of "quality products" and the concept of "green products";

- To provide technical assistance to producers and processors in developing the documentation necessary for the protection of designations;

- To provide technical assistance in developing projects for the promotion of traditional Romanian and environmental;

- To promote the image of traditional Romanian and ecological means of communication;
- To organize seminars, courses and training activities and information for groups of producers or processors, farmers' associations;
- To publish informational materials, brochures, leaflets, posters in the field of activity.

65. Up to this point, the National Office of Traditional and Ecological Products Romanian has representation in six counties in the country (Iasi, Galati, Arges, Timis, Bihor and Alba), serving small and medium producers, keep in touch with the operators and processors and receive applications for certification of products. This office is intended to help processors of local agricultural products and traditional food in obtaining protection at European level.

66. The relationship between the evidence of traditional products and the protection of designations (PGI / PDO / STG) is materialized through the following:

- The system of attestation performed to identify the national potential for traditional products, coming in support of producers who produce the same type of product, to associate and to request registration and obtaining protection at national and Community level;
- The protection system shall ensure the protection of traditional names identified.

67. According to information provided by MARD, currently in Romania there are over 2000 recognized traditional products, of which around 50% is for milk products and cheese.

68. Certification of products is made only at the request of producers, who must submit a specification to the MARD. The certification process involves several stages; different directions Romanian inspection will go to the factory, the manufacturer money, to check the production process, ingredients, quantity, consistency, blend, the packaging, storage, storage.

69. Very high costs that they must pay the manufacturer for certification constitutes an obstacle to obtaining protection. This is one of the reasons that there are currently filed one application for protection of geographical indication, "the jam Topoloveni", following the registration procedure.

### III. CONCLUSIONS

70. Given the wide variety of products marketed and abundance of information offered in this area, consumers should dispose of a clear and succinct information on the products' origin, the specific characteristics of their areas due to geographical origin and traditional production methods, history, giving them opportunity to make the best choice.

71. Currently, in Romania the protection of geographical indications and designations of origin is carried out under Community law matters.

72. Meanwhile, are nationally applicable the provisions of Law no. 84/1998 on trademarks and geographical indications, which transpose into national law the provisions of international conventions and treaties to which Romania is party, particularly the Paris Convention and the TRIPs Agreement.