

# **„made in..“ and European Community law**

**Mag. Konrad Lenneis**

# Definition

“made in...” labelling of a product means:

- all names or labelling of a certain product, which express its origin from a certain geographical area

# Problem

- Statements about the geographical origin of a product are suited to influence purchase decisions of consumers, due to
- the special quality of a product (especially as regards foodstuffs) or
- prestige or
- other characteristics on grounds of the geographical origin

- no act of EC law is expressly regulating or defining the criteria allowing to label a products „made in...“ („Made in Italy“, „Made in EC“, „Made in Japan“ etc. )
- precise regulation only regarding geographical origin of foodstuff
- for establishing criteria a look must be taken to EC law regulating similar fields

## Free movement of goods and exeptions

- Article 35 and 36 TEC prohibit measures having equivalent effect to quantitative or qualitative restrictions on imports
- Article 36 TEC: “The provisions of Article 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, the protection of health and life of humans, (...) or the **protection of industrial and commercial property.**”

# Labelling of Foodstuff

- Directive 2000/13/EC:
  - Name and business address of manufacturer, packager or seller -> in principle no „made in...“ indication required
  - The place of origin or provenance of foodstuffs has to be discernible from the label where failure to give such particulars might mislead the consumer
  - Further specific directives or regulations regarding particular types of foodstuff (wine, beer, honey, chocolate, bakery, e.g.)

- Application by „groups“ before Member States, scrutinization by European Commission
- Objection before European Commission by any natural or legal person having legitimate interest
- PDO/PGI may be used by any operator marketing foodstuff conforming to the regulation
- Member States shall ensure a system of official controls
- Protection against
  - i. any direct or indirect commercial use
  - ii. Misuse, imitation, evocation („style“, „type“, „method“ etc.)
  - iii. False or misleading indications on origin and quality
  - iv. Any other practice liable to mislead the consumer

# Designations of Origin / Geographical Indications

Regulation 510/2006/EC

- Regulation 2081/92 establishes “**protected designations of origin - PDO**“ (quality and characteristics mainly or exclusively due to geographical environment) and “**protected geographical indications - PGI**“ (specific quality and reputation due to geography), which can be registered
- name of region, place, in specific cases a country
- no protection for generic names
- product specification (raw materials, biological characteristics) for eligibility as **PDO/PGI**



## **„Simple“ geographical indications and non-food products:**

- awarding quality labels for supporting the sales of products manufactured in a member state is a measure of equivalent effect according to Art. 28 TEC as it is giving an advantage to goods produced in the Member State (ECJ C-325/00 „Quality produce from Germany“)
- PDO/PGI and other geographical origin protection admissible, but no national regional labels (ECJ C-6/02 „French regional labels“)

- > Member States are not allowed to establish own specific protection for „made in“ statements in order to promote products by their manufacturers
- > logically an EC legislation on „made in“ statements referring to the territory of the member states is as a consequence unprobable
- > nevertheless, the use of „made in“ by natural or moral person is allowed
- > other EC legislation give indications under which conditions „made in“ statements may be used or are protected

# Trade marks

Directive 2008/95/EC and Regulation 40/94/CE

- Trade marks, which consist exclusively of signs or indications that designate the geographical origin of a product, may not be registered and, if registered, will be declared invalid
- The same applies to trade marks, which deceive the public about the geographical origin of a product

- Possibility of filing of **Community Collective Marks** by associations of manufacturers, which may also include geographical indications
- Such associations must accept third parties from same geographical area as members (examination of statutes in the course of the application)
- does not entitle to prohibit „honest use“ of geographical indication
- main difference to PDO/PGI: can be registered for all kind of goods/services, no quality criteria

# Unfair Commercial Practices

Directive 2005/29/EC

- Unfair commercial practices shall be prohibited. Commercial practices, which are misleading or aggressive, shall be considered unfair. (Art. 5)
- According to Article 6, a commercial practice shall be regarded as misleading, if it contains false information and is therefore untruthful or in any way deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:
  - (...)
  - b) the main characteristics of the product, such (...) geographical or commercial origin

# Misleading Advertising

Directive 2006/114/EC

- According to Art. 2 “misleading advertising” means any advertising, which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor.
- In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information in contains concerning:
  - a) the characteristics of goods or services, such as (...) geographical or commercial origin (Art. 3)

# Comparative Advertising

Directive 94/450/EEC and 97/55/EC

- Comparative advertisement is permitted for products with the same designation of origin
- Shall not take unfair advantage of the reputation of designation of origin of a competing product

## Further sources of law:

- **TRIPS** (Agreement on Trade Related Aspects): member states shall prohibit misleading geographical indications, specific protection for wine
- **Paris Convention**: products which have misleading geographical indications shall be confiscated by Customs



## **EC Customs regulation (1383/2003/CE)**

- PDO/PGI as well as geographical denominations of wine protected
- Rightholders may seek action by customs authorities under the same conditions as intellectual property right holders
- „made in“ has no rightholder

# Conclusion:

- no act of EC law is expressly regulating the use of “made in”
- use is voluntarily but can be inadmissible if misleading according to EC unfair competition rules
- concrete criteria for when “made in” is misleading are mainly defined by case law of the member states -> different results in the Member States
- EC law regulates only geographical indications regarding specific products in the agricultural/food sector
- Specific protection instrument Community collective mark

## Perspectives

- Working paper of European Commission regarding denomination of origin „Made in EU“ as well as for imported products
- EC Commission sees basically three options
  - Voluntary use for EU and imported products
  - Voluntary for EU, obligatory for imported products
  - Obligatory for both
- Proposal for a Council Regulation on the indication of the country of origin of certain products imported from third countries {SEC(2005) 1657}

Thank you for your attention

[konrad.lenneis@bma-law.com](mailto:konrad.lenneis@bma-law.com)

+ 43-1-535-16-30