

IDENTIFYING LOCAL FOOD IN THE CONTEXT OF EUROPEAN SYSTEM OF GEOGRAPHICAL INDICATIONS AND CONSUMER'S RIGHT TO INFORMATION

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ABSTRACT: The aim of the discussion is to assess the adequacy of the EU legal instrument PDO and PGI for the identification of locally produced products. PDOs and PGIs, due to their importance under the EU protection system, contribute the most to the reputation and visibility of territorial products. Although they guarantee the origin of a product from a specific area, they do not specify the proximity between the place of production and delivery, and the sale of products with their labels is not limited to the local area. Due to complicated registration procedures and the requirements to link the quality, characteristics or reputation of a product to its origin, they are not a suitable instrument for distinguishing and identifying local food, which needs a simple and inexpensive tool for promotion and differentiation. The lack of a definition of local food and an EU labelling system as well as the absence of an obligation to indicate the place of origin on the product label does not allow consumers to make informed choices on the basis of clear and transparent information on the characteristics of the product, its origin and possible risks associated with it. Such a legal situation is contrary to the principle of food law, expressed in Article 3(1) of Regulation (EU) No 1169/2011 on protecting the consumers' interest by providing a basis to make informed choices.

RESUMEN: El objetivo del debate es evaluar la idoneidad del instrumento jurídico de la UE DOP e IGP para la identificación de productos producidos localmente. Las DOP y las IGP, debido a su importancia en el sistema de

protección de la UE, son las que más contribuyen a la reputación y visibilidad de los productos territoriales. Si bien garantizan el origen de un producto de una zona concreta, no especifican la proximidad entre el lugar de producción y entrega, y la venta de productos con sus etiquetas no se limita al área local. Debido a los complicados procedimientos de registro y a los requisitos para vincular la calidad, características o reputación de un producto a su origen, no son un instrumento adecuado para distinguir e identificar los alimentos locales, que necesitan una herramienta sencilla y económica de promoción y diferenciación. La falta de una definición de alimento local y de un sistema de etiquetado de la UE, así como la ausencia de la obligación de indicar el lugar de origen en la etiqueta del producto, no permite a los consumidores tomar decisiones informadas sobre la base de información clara y transparente sobre las características. del producto, su origen y posibles riesgos asociados al mismo. Semejante situación jurídica es contraria al principio de la legislación alimentaria, expresado en el artículo 3, apartado 1, del Reglamento (UE) n.º 1169/2011 sobre la protección de los intereses de los consumidores proporcionando una base para tomar decisiones informadas.

RESUM: L'objectiu del debat és avaluar l'adequació de l'instrument legal de la UE DOP i IGP per a la identificació dels productes de producció local. Les DOP i IGP, per la seva importància en el sistema de protecció de la UE, són les que més contribueixen a la reputació i visibilitat dels productes territorials. Tot i que garanteixen l'origen d'un producte d'una zona concreta, no especifiquen la proximitat entre el lloc de producció i el de lliurament, i la venda de productes amb les seves etiquetes no es limita al territori. A causa dels complicats procediments de registre i dels requisits per vincular la qualitat, les característiques o la reputació d'un producte amb el seu origen, no són un instrument adequat per distingir i identificar els aliments de proximitat, que necessita una eina senzilla i econòmica de promoció i diferenciació. La manca d'una definició d'aliment local i d'un sistema d'etiquetatge de la UE, així com l'absència de l'obligació d'indicar el lloc d'origen a l'etiqueta del producte, no permet als consumidors prendre decisions informades sobre la base d'una informació clara i transparent sobre les característiques. del producte, el seu

origen i els possibles riscos associats. Aquesta situació jurídica és contrària al principi de la legislació alimentària, expressat a l'article 3, apartat 1, del Reglament (UE) núm. 1169/2011, relatiu a la protecció dels interessos dels consumidors, proporcionant una base per prendre decisions informades.

KEYWORDS: Agri-food law – Local food – Geographical indications – Consumer protection – Protected Geographical Indications – Protected Denomination of Origin – Food quality system.

PALABRAS CLAVE: Derecho agroalimentario – Alimentos locales – Indicaciones geográficas – Protección al consumidor – Geográficas Protegidas.

PARAULES CLAU: Dret agroalimentària – Alimentació local – Indicacions geogràfiques – Protecció del consumidor – Geogràfiques protegides.

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I. INTRODUCTION

The concept of local food is not defined in EU law. There is also no EU labelling system to allow consumers to recognise it on the market¹. The literature assumes that local food "means that there is geographical proximity between the farmer and the consumer, i.e. that the food is produced close to the place of consumption, but there is no standardization of distance [...]"². Providing

¹ Commission Staff Working Document on various aspects of short food supply chains accompanying the document Report from the Commission to the European Parliament and the Council on the case for a local farming and direct sales labelling scheme COM(2013) 866 final, p. 5.

² Giuliana Strambi, "Short food supply chain and promotion of local food in Italian and UE law" in Alessandro Isoni, Michele Troisi, Maurizia Pierri (eds.), *Food Diversity Between Rights, Duties and Autonomies*, Springer 2018, p. 134; Eleonora Sirsi, "Regole e implicazioni giuridiche della produzione e del consumo del cibo locale", in Pasquale Nappi, Giulio Sgarbanti, et al.

consumers with adequate information to enable them to make “informed choices”, including environmental or ethical considerations, is an objective of food law, as expressed in Regulation (EU) No 1169/2011³. However, this regulation did not take into account the "locality" of the product, i.e. indicating the geographical proximity between the place of production and the place of sale. Moreover, in many cases, consumers are not informed at all about the place or country of origin of the food.

Local products together with short supply chains and local food systems can be a key element of sustainable food systems whose development is promoted by the UE⁴.

In EU law, a specific system for indicating the place of origin of a product applies to geographical indications, i.e. Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs), regulated by Regulation (EU) 2024/1143 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products⁵ which repealed the previous Regulation (UE) 1151/2012. The aim of the deliberations is to assess whether the EU legal instrument of PDO and PGI are suitable for the identification of locally produced food, and in particular to answer the question whether they fulfil the function of identifying and guaranteeing locally produced products, as well as preventing consumers from being misled, ensuring the achievement of the objectives of food law in terms of protecting consumer interests⁶.

(eds.), *Studi in onore di Luigi Costato*, vol. 3. Jovene, Napoli 2014, p. 501; Alexander J. Stein, Fabien Santini, "The sustainability of 'local' food: A review for policy-makers" in *Review of Agricultural, Food and Environmental Studies*, no. 103 (1), 2022, p. 78.

³ See Article 3(1) and subparagraph (4) of Regulation (EU) No 1169/2011 on the provision of food information to consumers, OJ L 304/18, 22.11.2011. See more in Paweł Wojciechowski, „Znakowanie żywności jako instrument realizacji celów prawa żywnościowego”, in *Przegląd Prawa Rolnego*, no 2, 2021, p. 509-529.

⁴ Commission Communication European Green Deal, COM(2019) 640 final, point 2.1.6. and The Commission Communication A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system, COM/2020/381 final, p. 5.

⁵ OJ. L, 2024/1143, 23.4.2024.

⁶ See Articles 1 and 8 of Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety OJ L 031 of 1.2.2002, and Article 3 of Regulation (EU) No 1169/2011.

II. HIGHLIGHTING THE LOCAL ORIGIN OF PRODUCTS IN THE LIGHT OF REGULATION (EU) NO 1169/2011

The European Union, in order to guarantee and promote the principle of free movement of goods, opposes the labelling of food origin because it could fragment the single market and indirectly encourage consumers to buy a domestic product⁷. According to Article 26 of Regulation (EU) No 1169/2011, the indication of the country of origin or place of origin of a food is only mandatory if failure to do so would be likely to mislead consumers as to the actual country or place of origin of the food. Only for certain products does the provision introduce an obligation to indicate the country of origin or place of origin⁸. In this case, the interest of the consumer outweighs the commercial interest⁹. However, in the light of the principle of the free movement of goods and the principle of mutual recognition, the quantitative aspect of the product is favoured over the qualitative one¹⁰. As a consequence, the labelling of only certain products allows the consumer to trace them, while in the case of other foodstuffs, the indication of their origin is considered a possible obstacle to the free movement of goods¹¹.

It should also be noted that the name and address of the food business operator responsible for the food information given on the label does not necessarily indicate the place of origin of the food or the country where the food was obtained as provided for in Article 2(2)(g) of Regulation (EU) No 1169/2011. The lack of a definition of local food and an EU labelling system as well as the absence of an obligation to indicate the place of origin on the

⁷ Alberto Germanò, "Le indicazioni in etichetta (e la loro natura) e i segni degli alimenti" in *Rivista di Diritto Agrario*, no 2, 2012, p. 209. See. also the judgment of the ECJ Dassonville (judgment of the ECJ of 11 July 1974, *Procureur du Roi v Benoît and Gustave Dassonville*, 8/74, ECLI:EU:C:1974:82), prohibiting States from adopting measures which may restrict imports in quantitative terms; Luigi Russo, "Communication of the origin of food products: legal aspects" in *Przeгляд Prawa Rolnego* no 2, 2021, pp. 405-406.

⁸ See Article 26 of Regulation (EU) No 1169/2011. Currently, origin marking is mandatory in the EU for honey, fruit and vegetables, olive oil, fishery and aquaculture products, as well as fresh, chilled and frozen beef, pork, sheep and goat meat and poultry. See. for more information on Article 26 of Regulation (EU) 1169/2011 L. Russo, *Communication of the origin...*, pp. 407-412.

⁹ Germanò, "Le indicazioni in etichetta ...", p. 209.

¹⁰ Russo, "Communication of the origin...", p. 406.

¹¹ Giuseppe Spoto, "La sovrapposizione di regole sull'origine dei prodotti agricoli e alimentari" in Roman Budzinowski (ed.), *XV World Congress of Agricultural Law: Contemporary challenges of Agricultural Law: among Globalization, Regionalization and Locality*. Adam Mickiewicz University Publishing House, Poznań 2018, p. 445.

product label does not allow consumers to make informed choices on the basis of clear and transparent information on the characteristics of the product, its origin and possibly the risks associated with it. Such a legal situation is contrary to the principle of food law, expressed in Article 3(1) of Regulation (EU) No 1169/2011 on protecting the consumer by providing him with adequate information. Manufacturers, on the other hand, do not have a ready-made instrument with which to differentiate their products on the local market.

III. GEOGRAPHICAL INDICATIONS AS AN INSTRUMENT FOR DISTINGUISHING AND IDENTIFYING LOCAL FOOD

The EU PDO and PGI system regulates the use of geographical names to designate agri-food products and protects the exclusive right of producers in a given geographical area to use a toponym to distinguish their products on the market from other products produced outside that area¹². PDOs and PGIs have the function of informing about the place of origin of a product from a specific area, although they are not necessarily a geographical designation, but can be a non-geographical name for a product originating in a specific place, region or country (Article 46(1) and (2) of Regulation No 2024/1143)¹³. Thus, the name of a PDO/PGI product identifies and represents a territory even in the absence of a geographical reference¹⁴. However, the indication of the place of origin does not necessarily determine the geographical proximity between the place of production and the place of sale¹⁵. Products with geographical indications are only "local" if they are sold in close proximity to where they are manufactured.

¹² Alberto Germanò, Maria Pia Ragionieri, Eva Rook Basile, *Diritto agroalimentare. Le regole del mercato degli alimenti e dell'informazione alimentare*, ed. 2. Giappichelli, Torino 2019, p. 150.

¹³ Edyta Całka, Ewa Nowińska, Ryszard Skubisz, "Geograficzne oznaczenia pochodzenia", in Ryszard Skubisz (ed.), in *Prawo własności przemysłowej, System Prawa Prywatnego*, vol. 14C, ed.1 Beck, Warsaw 2017, Nb 99.

¹⁴ Ferdinando Albisinni, *Strumentario di diritto alimentare europeo*. Utet Giuridica, Milano 2020, p. 296 pp. and Alessandra Di Lauro, "Le denominazioni d'origine protette (DOP) e le indicazioni geografiche protette (IGP)" in *Paolo Borghi, Irene Canfora, Alessandra Di Lauro, Luigi Russo* (eds.) *Trattato di diritto alimentare italiano e dell'Unione Europea*. Giuffrè, Milano 2021; p. 433.

¹⁵ Gabrielle Rochdi, "Le développement des circuit alternatifs de distribution", in Benoit Grimonprez, Denis Rochards (eds.), *Agriculture et ville, vers de nouvelles relations juridiques*. Presses universitaires juridiques de Poitiers, Poitiers 2016, p. 26.

PDOs and PGIs are protected by law against imitation, evocation or other practices that could exploit the reputation of the name¹⁶. The registration of the name and designations is preceded by a complicated administrative procedure at the national and EU level, verifying the correctness of the product specification developed by a group of producers from the geographical area where the product is manufactured. The purpose of registration of names and designations is to protect them legally, which means that only products in accordance with the specification, manufactured by any manufacturer in a defined geographical area, may be marketed under the registered name¹⁷. In this way, on the one hand, the regulation safeguards the interests of producers, who are protected against unfair competition and the use of a protected name to sell a product of inferior quality, and on the other hand, it provides clear information for consumers and guarantees that the purchased product has been obtained in accordance with the product specification.

Only names and geographical indications which demonstrate the existence of a substantial link between the quality, characteristics or reputation of the product and the territory of origin in accordance with Regulation (EU) No 2024/1143 may be protected by this scheme¹⁸. This link must be proven and demonstrated in a product specification¹⁹ accepted by the Member State and published by the EC²⁰. Recognition of the specific characteristics of products with a designation of origin is not only a proof of origin but also a guarantee of quality for consumers²¹. "Local" products do not necessarily have such a proven link between their quality or characteristic and their origin and therefore cannot be covered by these quality schemes in such a case.

The protection system is uniformly guaranteed by each Member State against the illegal use of the names and designations²², so that European producers and consumers can understand the labels in the same way and have

¹⁶ See Article 26 of Regulation (EU) No 2024/1143.

¹⁷ Article 37(1) of Regulation (EU) No 2024/1143.

¹⁸ See. definition of PDO in Article 46(1) of Regulation (EU) No 2024/1143 and the definition of PGI in Article 46(2) of that Regulation.

¹⁹ See Article 49 of Regulation (UE) No 2024/1143.

²⁰ See Article 13(1)c) and 15(4) of Regulation (EU) No 2024/1143.

²¹ Małgorzata Korzycka, " Własność intelektualna w obszarze rolnictwa i żywności", in Małgorzata Korzycka, Paweł Wojciechowski (eds.) *System prawa żywnościowego*. Wolters Kluwer Polska SA, Warszawa 2017, p. 567.

²² See. Article 42 of Regulation (EU) No 2024/1143.

confidence in their credibility. Such a system provides the function of identifying and guaranteeing origin and quality, as well as not misleading as to the origin of the product in a specific territory²³. Products with such a label are an emanation of the territory²⁴. However, PDOs and PGIs do not have the function of identifying or guaranteeing the origin of a product in close proximity from the place of sale.

IV. CONCLUSIONS

PDO and PGI due to complicated registration procedures, as well as the requirements to link the quality, characteristics or reputation of a product to its origin, are not a suitable instrument for distinguishing and identifying local food, which needs a simple and inexpensive tool for promotion and differentiation. While PDOs and PGIs guarantee the origin of a product from a specific area, they do not specify the proximity between the place of production and supply, and the sale of products bearing their markings is not limited to the local area. In addition, such a high level of protection, extending to the European and global markets, is not needed for local products. A significant number of them enjoy reputation and market value only locally, and it is also in this area that the unfair competition that threatens them takes place²⁵.

However, their role in the so-called territorial food system²⁶ cannot be underestimated, as they contribute the most to the reputation and visibility of

²³ See. Article 36 of Regulation (EU) No 2024/1143.

²⁴ Germanò, Ragionieri, Rook Basile, "Diritto agroalimentare...", p. 155.

²⁵ Regione Lombardia, 2014, Position Paper on Promoting European Local Food Systems, 2014,

http://www.unioncamerelombardia.it/images/file/BXL_appuntamenti%20e%20calendario%20eventi/Final%20version%20-%20position%20paper%20food.pdf [Retrieved on 19 May 2022].

²⁶ There is no definition of "territorial" or "local" food systems in EU law. The Committee of the Regions proposed to introduce their definition as systems that link producers with consumers, society, the environment and the regional economy, which concern products produced locally in the region of origin, and include their production and processing, marketing and promotion, branding and labelling, Outlook opinion of the Committee of the Regions "Local food systems" (2011/C 104/01), p. 5. More on "local" or "territorial" food systems in the literature see e.g. Anna Kapala, *Krótkie łańcuchy dostaw i lokalne systemy żywnościowe. Studium prawnoporównawcze*, Wydawnictwo Naukowe Innovatio Press, Lublin 2023; Rochefort, Gabrielle, Annie Lapointe, Annie-Pier Mercier, Geneviève Parent, Véronique Provencher, and Benoît Lamarche "A Rapid Review of Territorialized Food Systems and Their Impacts on Human Health, Food Security, and the Environment", *Nutrients* 2021,13, no. 10: 3345. <https://doi.org/10.3390/nu13103345>; Jacques-Eric Bergez, Elise Audouin, Olivier Therond

territorial products due to their importance provided by the EU protection system. Geographical indications identify a product and do not allow its history to be lost in the undifferentiated flow of goods, highlighting the territory in its complex sense, as a set of environmental and climatic characteristics, history and traditions, as an expression of the community living there²⁷. In this way, they contribute to the protection of the territory, local producers, traditions and the identity of local communities. They are part of the philosophy of opposition or an alternative to industrialized, anonymous products of global brands. When products bearing such indications are sold on local markets, that is, in the area where they are produced, they fall within the concept of local food as used in these considerations. Marketed globally through long supply chains, they do not meet the criterion of geographical proximity and do not reflect the characteristics expected of locally produced food, such as freshness or reduced carbon footprint.

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²⁷ Ilaria Trapè, I segni del territorio. Profili giuridici delle indicazioni di origine dei prodotti agroalimentari tra competitività, interesse dei consumatori e sviluppo rurale. Giuffrè, Milano 2012, p. 40.

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