

Literature review WP 1

Belgium

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Review report

1. IDENTIFICATION OF THE MOST RELEVANT RESULTS

"De bescherming van benamingen van oorsprong, geografische aanduidingen en herkomstaanduidingen, een juridische analyse naar belgisch, Frans, Nederlands, Europees en internationaal recht (Ponet 1998)" (The protection of the designations of origin, geographical indications, and indications of origin: a legal analysis of Belgian, French, Dutch, European and International law).

The law concerning designations of origin concerns an impressive number of national and international rules. The justifications that are presented are often divergent, *i.e.*, agricultural policy, protectionism, consumer information, protection from unfair competition, etc. The originality of Ponet's review is his systematic attempt to clarify and determine the boundaries of the various legal protection statuses through a comparison of the legal histories of the issue in Belgium, the Netherlands, and France. The author devoted a large part of his work to Regulation (EC) 2081/92, which is called upon more and more frequently for protective purposes. By its very nature, this protection causes great tension between its enforcement, national character, and supranational rules concerning the freedom of movement. The author managed to describe this tension, notably through the case law of the European Union's courts. For all those who have to grapple with the implementation of Regulation (EC) 2081/92, this book is a unique source of information and thought. As far as I know, it is available in Dutch only.

Politiques Régionales Nationales et Européennes de Labellisation (Spoiden, G., 1993)

A short (6-page) paper presented by the Walloon Region Agriculture's Ministry Department's attaché in charge of labels. This paper was presented a few months after Regulations (EC) 2081/92 and 2082/92 came out. It is one of the all-too-rare Belgian attempts to take stock of the specific quality approaches taken in the Belgian agri-food sector. It sheds documentary light on the complexity of the levels of power that are called into play, *i.e.*, national legislation, European legislation, and Walloon region legislation. The Flemish Region's point of view is lacking. The references enable the reader to have access to all of the relevant materials (laws, orders, and decrees).

Label, Signe officiel de qualité? Le label de qualité Wallon Blanc Bleu Fermier (Stassart, P., 1999)

The case of the "Farm Belgian Blue" is without a doubt the most controversial example of the Walloon Label of Quality's use. This was the first label recognised. Today, many observers agree that it has been a failure. This analysis looks at the social construction of the label and shows notably its kinship with the French Red Label, the difficulty of putting together a territorial qualification project, and the emergence of a new player on the field, the certifying body. The work's originality lies in its showing how the emergence of a food risk linked to the farmers' illegal use of hormones muddied the qualification project completely and changed the label into a guarantee against a risk. The matter of risk is relevant, at least in the meat sector. Yet this matter is studied little. For example, it is striking to see that the audits of the Walloon Label of Quality scheme say nothing about the influence of this factor. Yet the observed decline in the results of the label policy in 1995-96 can easily be related to two events, that is, the public debate about the hormone mafia that followed the murder of a veterinary inspector and the outbreak of the mad cow crisis.

2. SELECTION OF SCIENTIFIC AND RECENT (SINCE 1980) PAPERS, PUBLICATIONS, MEMORIES AND STUDIES IN THE COUNTRY (INCLUDING INTERNATIONAL AND NATIONAL MEETINGS HELD IN ENGLISH)

My review of the Belgian situation is limited to the "Origin Labelled Products" that benefit in one way or another from public intervention (Official Signs of Quality¹). In Belgium, the matter of specific quality (in the French sense of the word, as opposed to generic quality) has long come under the approach used in the English-speaking world. State intervention was limited to regulatory intervention to guarantee consumer safety and the consumer's right to product labelling information. Seen from this angle, a private trademark was a prime instrument for signalling the legitimacy of specific quality. However, two factors led to a change in this "non-interventionist" policy. First, the changes in Belgium's institutional framework that came about through the regionalisation of 1988 transferred a series of farm-related powers from national to regional government. Second, the succession of food crises – in the meat sector in particular – prompted the stepping-up of quality control and certification procedures at the end of the 1980s. Today, origin labelled products (OLPs) are of only marginal economic importance in

¹ Excluding the outputs of organic farming and integrated agriculture recognised by the federal authorities.

Belgium and only a few designations of origin enjoy European recognition, namely, two protected designations of origin (PDO) ("Fromage de Herve" (Herve cheese) and "Beurre d'Ardenne" (Ardenne butter)) and one PGI product ("Jambon d'Ardenne" (Ardenne ham)). The production levels of these products are relatively constant. European recognition is an advantage for export, at least in the case of Ardenne ham. The development of a hybrid government scheme combining origin and other dimensions of quality (Walloon label of quality) has had its ups and downs, as we show in the following table: a decline in beef and veal, linked to the lack of differentiation; a strong rise in the pork sector linked to the various crises; and a slump in the poultry (chicken) sector linked to the lack of specific processing structures (slaughterhouses).

Statistics supplied by Wallonia's Regional Administration

		Units	1993	1994	1995	1996	1997	1998	1999	2000
Regulation 2081/92										
PDO	<i>Fromage de Herve</i>	Kg					396 079	299 075	313 516	329 580
	<i>Beurre d'Ardenne</i>	Kg	2 700 000	3 623 965	3 412 376	3 214 285	3 033 492	2 802 581	2 464 444	2 340 853
PGI	<i>Jambon d'Ardenne</i>	number	321 227	315 770	300 000	330 272	277 758	315 185	351 648	
Walloon Label of Quality										
	<i>Blanc Bleu fermier</i> (farm Belgian Blue)	number	1 611	3 672	6 321	6 594	4 692	3 539	3 800	3 012
	<i>Porc Fermier</i> (farm pork)	number	6 082	4 872	5 580	5 840	6 345	7 810	15 455	17 970
	<i>Poulet de chair</i> (broiler)	number		391 06	43 318	44 931	43 957	65 419	41 651	45 691
	<i>Escargot fermier</i> (farm snails)	number							150 000	

The OLP matter is contested by the defendants of the English-speaking-world's approach but is not actually the subject of real discussion in Belgium. When it is covered, it is discussed above all from a legal and political angle that tries to clarify the matter of powers to recognise and check the signs of quality. Except for one legal scholar's Ph.D. thesis (1998 ?1?) and a research project (OSTC/FUL 1996-2000 ?2?), all of the documents available are of a political and administrative nature (assessments, audits, and mission reports) ?3?.

History and institutional developments

The designation "*Fromage de Herve*" is the first one in which Belgium's governmental authorities intervene directly in the protection of an agricultural commodity (Ministerial Order of 1938). At this time, the intervention was limited to the optional use of an official inspection mark for cheese makers and those responsible for maturing the cheese. It was not a designation of origin.

Designation of Origin (1971, national power)

The Trade Practices Law of 14 July 1971 set out the condition for certification and use of the phrase "Designation of Origin" (*Appellation d'Origine*). A scheme of administrative protection was adopted to allow recognition by royal decree of a Designation of Origin put forward by the Minister of Small Trades and the Self-Employed (SMEs). This recognition undergoes two trials, *i.e.*, publication in the official gazette (allowing for the possibility of a challenge), and consultation of the *Chambre des métiers et de négoce* (Chamber of Trades). The Trade Practices Law of 26 August 1991 stipulates that the bodies in charge of certifying the proofs of origin must be named by royal decree.

The designation of origin "*Jambon d'Ardenne*" (1974), the characteristics of which concern the smoking methods used, is the fruit of compromise between politicians and the agri-food industry. The link to the origin is weak and limited to the processing. It was difficult to enforce legal protection of this designation beyond the country's borders until EC Regulation 2081/92 went into effect. While the "*Beurre d'Ardenne*" designation (1985) specifies a geographic production area, it says nothing about the production process. Only some (non-specific) characteristics of the final product are defined. Here we can wonder about the specificity of the human factor linked to the product's origin !

The schemes that have been set up are aimed at ensuring the legal protection of the designation and faithfulness of the transactions. They do not concern the Agriculture Ministry. No specific follow-up was foreseen to permit a discussion and counter-discussion that could have culminated in a more constructed, even "upgradeable", definition of quality. The various types of recognition are the fruit of primarily political compromise. The Walloon Region's decree of 1989 proposes, on the contrary, a much more elaborate follow-up system modelled after the "agricultural label" approach of France's "Red Label" scheme.

Walloon Label of Quality (1989, a power of the Walloon Region)

The Institutional Reform Act of 8 August 1988 (which regionalised Belgium) gave the Regions the powers to grant labels of quality and designations of origin. Article 4(8) of this law stipulates that the national authority has sole power when it comes to competition law and laws governing trade practices, except for the awarding of labels of quality and designations of origin, of a regional or local nature.

Whereas the Flemish Region² has not made use of this power, the Walloon Region has, namely to establish the following through its decree of 7 September 1989:

- The Labels de Qualité Wallon (Walloon Labels of Quality) that are awarded to differentiate a top-of-the-line product and/or a product that boasts a specific quality. The following labels have been accepted by regional decree: "*Blanc Bleu Fermier*" (farm Belgian Blue) (1992), "*Porc Fermier*" (farm pork) (1993), "*Poulet de chair*" (broiler or roasting fowl) (1994), and "*Escargots fermiers*" (farm snails) (1998).
- The Appellations d'origine locale (Designations of Local Origin) refer to a commodity or crafting that owes its originality and qualities to conditions on the land of its "birth" and faithful, time-honoured practices, as a result of which its quality is not reproducible beyond the boundaries of this specific area (no applications to date).
- The Appellations d'Origine Wallonne (Designations of Walloon Origin), which are simple designations of where the commodities come from (no applications to date).

As it is organized, the Walloon Label of Quality is a break from the National Designations of Origin as regards the scheme's credibility and relevancy.

- The decree and its implementing orders create an organization that must enhance the approach's credibility. The Walloon Label of Quality is a collective trademark owned by the Walloon Executive Body, independent certifying bodies and inspection laboratories are approved, and a commission of labels and designations of origin that is composed of representatives of the producers, consumers, scientific circles, and the administration has been set up. This commission is in charge of the system's general supervision (oversight over inspections, disputes between certifying bodies, opinions about proposed specifications, etc.).
- The specificity of quality is guaranteed even more by the production system, *i.e.*, rations, husbandry techniques, animal welfare, etc. The Walloon Label of Quality seems to have been designed above all as an agricultural label. This explains the symbolic reference to the farm that has been attached to the four approved labels. There is thus a shift in the qualification register from the final product's intrinsic qualities to the production system. This leads to a change in the inspection procedures and the emergence of a new player, that is, the certifying body in charge of checking the entire chain of production.
- The entire scheme is identified by a trademark and logo, following the example of France's Red Label. In this way, the scheme is easier to recognise and transpose.

European Regulation 2081/92

In late 1994 the European Commission's Directorate-General for Agriculture contacted the Belgian State to challenge the Walloon decree of 1989. The DG argued that it contradicted Community law. In particular, the Commission's staff were of the opinion that the PDO-GPI regulation gave the Member States no residual powers to legislate in the area covered by this regulation. The Walloon Region's powers then found themselves caught between the limitations that were imposed on it by the European and national jurisdictions. The problem still has not been settled, seven years later. Here are three discussion elements and the Walloon Region's reactions: 0.

1 - The Walloon label is reserved for products that are linked to the territory of Wallonia, to the detriment of other producers in Europe.

This criticism overlooks the fact that the "Label of Quality" Decree is a collective trademark that has been registered as such and that a collective trademark can have a geographical dimension. According to a legal audit commission by the Walloon Region's Farm Minister, EC Regulation 40/94 on the Community Trademark, which in Articles 64-72 provides for Community collective trademarks comprising signs or indications, may be used to designate the geographical provenance of products and services. According to this review, the regulation indicates that titles of protection based on geographical considerations other than "PDO" and "PGI" may exist.

² The only initiatives taken by the Flemish regional authorities concern distilled beverages and a quality wine (Ministerial orders of 9 July 1997 on geographical designations based on EC Regulation 1576/89 and the Registered Designation of Origin of the Hagenland wine, based on EC Regulation 823/87).

2 - The Commission also claimed that the Member States no longer had any powers in the area governed by Regulation 2081/92.

However, a review of the European Court of Justice's rulings shows that this regulation has only a limited effect on the Member States' powers. In its ruling of 7 May 1997 (Pistre case concerning the regulated use of the designation "mountain"), the court considered, as the Commission agreed, that the Member States could uphold regulations protecting even a geographical reference, as long as there was no link between the product's characteristics and the specific area, as Regulation 2081/92 requires.

3 - In its opinion of 29 March 2000, the Belgian Council of State (national level)

- a) Stressed that if the Walloon Region's draft legislation tended to omit the adjective "Walloon" from the collective trademark "Walloon Label of Quality" and to drop the requirement that the product be made or processed in Wallonia to obtain this label, the power to award the label of quality would remain with the federal authority;
- b) Recognised the region's power to attribute PGI and PDO status (except in some rare cases of national designations or indications); and
- c) Recognised the region's powers regarding geographical designations for the products not covered by the European regulation (non-food and non-agricultural products).

The new Walloon project (2000-...)

Based on the three points discussed above, the Walloon government now plans to have its quality policy revolve around a collective trademark (the provisional name is OWALEX). This trademark would replace the Walloon Label of Quality and be a Community collective trademark to which the Commission could no longer object. Regulation (EC) 40/94 explicitly allows the collective Community trademark to be composed of a sign or indication that can serve in trade to designate the geographic source of a product or service (Article 64, §2).

Through the collective trademark, Wallonia's regional minister is actually trying to uncover an area of regional jurisdiction that would enable the region to develop a trademark without infringing on national and European powers and that would be specific in two regards: the products would be exclusively of Walloon origin and the definition of quality and its verification would be left up to the Walloon authorities.

The project under study seems to be close to the French certificate of conformity. It proposes an industrial-type definition of quality backed up by exclusively technical and scientific criteria. However, it is rather vague as to how to construct the quality criteria and who will be responsible for this. Finally, it offers no solutions for the problems of communicating these quality criteria to the consumers. This project, which will have to be carried out first in the meat (beef sector), seems to be more of a response to the successive crises that have swept through the meat sector. The political will to promote Walloon products and Wallonia's image as widely as possible glimmers through this approach. The proposal's weakness lies in the fact that it does not situate this approach within a broader "seal-of-quality" policy that would include organic farming, Regulations (EC) 2081/92 and 2082/92, local products, etc.

A transformation of the Walloon Region's "Walloon Label of Quality" Decree has been proposed as an afterthought, without any clear political will and according to which the designation of local or regional origin would be granted to non-food products (which are not covered by Regulation (EC) 2081/92) and the enforcement in the Walloon Regulation of Regulations (EC) 2081/92 (PDO-PGI) and 2082/92 (GTS - guaranteed traditional specialities).

?1? Ponet, B. (1998)

De bescherming van benamingen van oorsprong, geografische aanduidingen en herkomstaanduidingen, een juridische analyse naar Belgisch, Frans, Nederlands, Europees en internationaal recht.

Antwerpen-Groningen, Intersentia Rechtswetenschappen, 687 p.

?2? Mormont, M. ; Van Huylenbroeck, G. (2001)

A la recherche de la qualité.

Edition de l'ULG, Liège, 200 p.

Stassart, P. (Ed.) (1999)

Du savoir aux saveurs, 101 chemins pour une alimentation de qualité,

(collectif), Fondation Universitaire Luxembourgeoise, Vredeseilanden-Coopibo, Arlon-Leuven, 142 p.

Collet, E. ; Stassart, P. (2001)

Initiatives comme itinéraire d'apprentissage.

In Mormont, M. (Ed.) *A la recherche de la qualité*, Ed. Université de Liège, pp 87-112.

Collet, E. (1999)

La Fermière de Méan: fonder une nouvelle relation entre producteur et consommateur.

In *Du savoir aux saveurs*, Stassart, P. (Ed.), pp 39-48.

Collet, E. (1999)

De l'encadrement à la valorisation des techniques sur le marché: GAWI, Fruinet.

In *Du savoir aux saveurs*, Stassart, P. (Ed.), pp 61-70.

Stassart, P. ; Collet, E (1999)

Construction d'un label de qualité, Les régions fragiles face à la mondialisation.

Coll. Débats et Tendances en développement régional, Rimouski. Canada, pp 179-192.

Stassart, P. ; Collet, E. (2001)

Construction socio-technique de la qualité.

In Mormont, M. (Ed.) *A la recherche de la qualité*, Ed. Université de Liège, pp 51-86.

Stassart, P. (1999)

Label, Signe officiel de qualité? Le label de qualité Wallon Blanc Bleu Fermier.

In *Du savoir aux saveurs*, Stassart, P. (Ed.), pp 71-85.

Stassart, P. (1998)

Social construction of a label.

Paper presented at *Summer School of the European Society of Rural Sociology (ESRS) 22-28/08, Lodz, Poland*

Van Huylenbroeck, G. ; Verhaegen, I. ; Collet, E. ; Mormont, M. ; Stassart, P. ; Vannoppen, J. (1998)

An inventory of emerging innovation project in belgium.

52. Seminar of the EAAE: *Typical and traditional products: rural effect and agro-industrial problems*, Parma, Italy, June 19-21, 1997, pp 169-186.

?3? Conseil d'Etat (2000)

Avis du conseil d'Etat sur le projet de décret modifiant le décret du 7 septembre 1989.

(3 avril), 9 p.

Ministère wallon de l'Agriculture et de la ruralité (2001)

Audit du dispositif de promotion des produits agricoles en Région wallonne.

Namur, 36 p.

Spoiden, G. (2000)

Rapport de mission de Ir. Guy Spoiden, attaché à Paris le 19 janvier 2000.

Namur, 11 p.

Spoiden, G. (1999)

Rapport d'évaluation sur l'application du Décret du 70989.

Administration Namur, 11 p.

Spoiden, G. (1996)

Enquête de satisfaction des adhérents au label de qualité "Blanc Bleu Fermier".

Rapport final, Commission des Labels, Liège, 8 p.

Spoiden, G. (1993)

Politique régionale, nationale et européenne de labellisation.

Nouvelle de la Science et des Techniques, vol 11, N° 2, ULB Brussels pp 183-189.

Discussion report

1. NEED FOR NEW RESEARCH

1.1. Credibility and implementation of Regulation (EC) 2081/92

Regulation (EC) 2081/92 answers the questions that have been raised about the exclusive property rights of the designations of origin and geographical designations. However, it provides only a partial solution to the problem of such a scheme's credibility. While the registration procedure guarantees legal protection, it (thankfully!) does not settle the matter of the overall national and regional organization of the scheme so as to guarantee its credibility. One may well ask, for instance, about the roles of the State, the institutions that serve as intermediaries, and the links between the producers' collective, in addition to the States and Regions' roles in the scheme's general surveillance. This applies to both the validation of the qualification scheme's construction and oversight over the inspection procedures. In Belgium in particular, no one, to our knowledge, has evaluated seriously how the labels commission works and its connections with the administration, certifying bodies, and professions' associations. The attempts to reduce this commission to a scientific commission in which the debates would take place between scientists and administrations only are not reassuring in this regard.

1.2. New Relevancies?

Origin as a sign of quality interests us because it makes sense to consumers. In such a case the qualification refers to taste and the preservation of local traditional knowledge. This reference does not exclude other references. On the contrary, hybrid forms of justification are common in the case of Belgium. So, consumer protection, with reference to safety, is becoming more and more important, as I underline in the case of the "Farm Belgian Blue" label. We could examine the emergence of these hybrid forms of relevancy from two angles of attack, to wit:

- 1) by examining whether the new forms of justification reported over the past ten years or so were originally part of special configurations:
 - environmental justifications referring to the protection of nature, landscapes, or natural resources or consumer protection from pollution linked to overly industrialised production;
 - heritage-related justifications referring to the protection of know-how and traditions;
 - ethical justifications referring to animal welfare, amongst other things; and
 - regional planning and development.
- 2) by examining to what extent schemes other than Regulation (EC) 2081/92 facilitate these new justifications' hybridisation with origin. Here I have in mind the Community Trademark Regulation mobilised by the Walloon Region's authorities. For example, taking the perspective of innovation, we could wonder about Regulation (EC) 2081/92's ability to foster and allow for the emergence of such hybrid forms. A contrario, we could examine how other measures facilitate this hybridisation between origin-related justification and new emerging justifications. In Belgium, for example, we have abbey cheese makers who, after voicing the desire to register for PDO status, withdrew, although they met the conditions set down by the regulation. What type of scheme did they choose and why did they choose it?

2. POLICY-RELATED ISSUES

Paper important for the policies and important for the WTO

Ponet, B. (1998) De bescherming van benamingen van oorsprong, geografische aanduidingen en herkomstaanduidingen, een juridische analyse naar belgisch, Frans, Nederlands, Europees en internationaal recht., Antwerpen-Groningen, Intersentia Rechtswetenschappen, 687 pp.

Merits: See summary

The legal audit of the problems raised by complying with the Walloon Label of Quality Decree that was conducted by F. De Visscher for the Walloon Region. Confidential document.

These two documents examine the tensions and possibilities for co-existence between Regulation (EC) 2081/92 and other forms of legal protection, including the European collective trademark (Regulation (EC) 40/94). They can provide food for thought about the controversy between the advocates of the free play of competition to maintain quality and those who are in favour of a Community regulation that would reserve the exclusive use of place names to quality products with particular characteristics through an official certification scheme. We know that this controversy will arise again in the course of the future WTO negotiation

