

**Quality of Life and Management of Living Resources**

Key Action n° 5

Sustainable agriculture, fisheries and forestry, and integrated development of rural areas including mountain areas

# **Concerted Action DOLPHINS**

**Development of Origin Labelled Products :  
Humanity, Innovation and Sustainability**

Contract QLK5-2000-0593

## **WP 1**

**Origin Labelled Products :  
Definitions, characteristics,  
legal protection**

*Final Report*

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# Part 1

# Synthesis WP 1

**Origin Labelled Products :  
Definitions, characteristics, legal protection**

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## INTRODUCTION

The aim of WP1 is to clarify the various definitions of OLP, the role of analytical characterisation and the modalities by which the Law in different countries has protected OLP.

This Workpackage is co-ordinated by François Casabianca (P3 INRA – LRDE Corte), with the assistance of Prof. Lorvellec and Prof. Doussin (P4 – CEDRAN). Unfortunately, these assistants had to give up and been recently replaced.

So, during the second part of the task 1, the assistance was brought by Mrs V. LEMEUR BAUDRY (a French lawyer specialised on these questions) and D. BARJOLLE (from Swiss Institute).

According to the proximity between the aim of WP1 and the D4B, several considerations have to be articulated in the two reports. Obviously, the major points to be noticed in order to give some help on WTO negotiation are gathered in D4B report.

### 1.1. FRAMEWORK

#### 1.1.1. Objectives of the WP

The main objectives of the WP1 can be summarised as following :

- \* There are several definitions of OLP in the different countries of EU. Our preoccupation is to specify the role of *Origin* into the territorial qualification of food products.
- \* Due to the specialities of researchers involved into our project, we have no real interest to mobilise complete analytical point of view. However, we must articulate OLP with other types of signal, in particular *Quality signs* and *trade marks* (with or without signs).
- \* Very often, producers of a country A feel as competition distortion the fact to be refused with quite the same file as producers of a country B whose demand is already accepted. The various way to implement the application of European regulation within members of UE is producing diversity and, as a matter of fact, *new risks of distortion*.  
EU is facing the same problems in *WTO negotiations* and we must have a reflection about the best way the several European countries can converge to common interests in protecting OLP.

#### 1.1.2. Members of the WP

WP1 has 13 researchers participating, representing 9 units of the project and 7 countries.

Partners participating to the WP1

Country	Partner	Researchers
France	INRA – LRDE Corte	F. Casabianca
	CMC Le Mans	V. Le Meur-Baudry
Italy	University of Parma – UNIPR	C. Giacomini, C. Mancili
	University of Florence – DSE – UNIFI	F. Milani
Switzerland	SRVA - University of Geneva	D. Barjolle, E. Thévenot-Mottet
Germany	TUM Munchen – PFM	A. Profeta, F. Thiedig
Spain	DGA - SIA - Unidad de Economía Agraria	A. Gracia
Belgium	Fondation Universitaire Luxembourgeoise – FUL	P. Stassart
Portugal	INIA - DEEESA	A. Fragata, I. Seita Coelho

In addition, during the Firenze meeting, one expert was invited, a cheese technologist (M. Bruno MARTIN) from a French unit working on the analytical linkage between the forages given to cows and the characteristics of the cheese obtained from processing the milk of these cows. And researchers doing invited conferences in plenary session of Firenze meeting joined the WP1, bringing an important expertise on legal discussions (Mrs E. BARHAM, MM. J. CHEN and E. THEVENOD).

The same additional help was brought during Paris meeting with M. FANET director of international relations at the French Institute of Appellations of Origin (INAO) and M. BERENGUER from European Commission.

### 1.1.3. Methodology

For having real interest to international comparisons, it seemed more efficient not to start with established definitions to be collected but reconstruct *rationality* each one is produced by. So, we proposed to give attention to dynamics explicitly in relation with EC regulation 2081/92 and mobilising its application at *three levels* :

??EC decision-making and the several national or international influences,

??National interpretations of the regulation,

??Local dynamics of production systems.

#### Phase 1 (before Firenze meeting)

First, each participant was invited to bring a synthesis of literature from his country on the topic and identify the points to be clarified.

So, a general questioning was proposed by the responsible to all participants in order to organise the work within the WP and based upon the three levels. Each participant team prepared a short communication dedicated to one identified point on which this team is supposed to be a major contributor.

The Firenze meeting allowed to carry through a confrontation among several national realities, focusing on the materials brought by the short communications.

#### Phase 2 (seminars, reference to the working papers)

An intensive work has been carried out on the **legal dimensions** of OLP. The D4B report is bringing some aspects of this deepening related to the question of WTO negotiation.

We also organised one intermediate meeting in Parma, by Partner 5, 8 and 3. We discussed on **assessment and controls of PDO and PGI**, according to the article 10 of the 2081/92 regulation. The questions are more dedicated to distribution of responsibility between production consortia and control bodies, competency and role of analytical responses.

#### Phase 3 (Paris meeting)

A first draft of D4B was examined during the Paris meeting as a good basis of collective debates.

C. Mancini (Parma team) reported in Paris meeting about the Parma meeting. One findings is the difference between historical and juridical systems pre-existing the EC-regulation. Art 10 and 14 defines the rules to be respected by the Certification Body. In Italy, some difficulties are underlined due to the need to change from a control supervised by the Inter-professional Body by a certification through a certification Body EN 45' 011 , but it can be temporary because still very new.

In France, there is a great difference between PDO control still managed by INAO as public entity (and the inter-professional body receive a delegation from INAO to insure all procedures of assessment), and PGI control given to certification body EN 45'011.

These aspects have an impact at national and international level. The credibility of the certification reinforces a lot the PDO-PGI regulation.

## 1.2. MAIN FINDINGS

A conceptual framework has been proposed to organise the debates of the Firenze meeting (see 1.3).

It is build on an exploration of the 3 identified levels and mobilise the contributions of the several participating units (see 1.2 -A). Some questions were clarified after these debates (see 1.2-B).

## 1.2.1. Main scientific inputs

### A. International / EU approach

#### *TRIPS Agreements (E. Thevenod)*

The protected geographical indications belong to the rights of private properties but the linkage between the product and the "terroir" obliges to study collective property. Is this notion acceptable in an international point of view? For PGI, it seems to be easier than for PDO, where this linkage is stronger.

The risk of competition distortion is referred to confusing the consumer, but what kind of knowledge is supposed to be acted by the average consumer? Is the notion of average consumer objective?

A part of the agreements concerns only wines. The questions of trade marks and the protection of geographical indications are referred to previous deposition (the exceptions of article 24). Are these agreements a model for all products?

#### *EU / National approaches (F. Thiedig)*

The initial context (before 1992 and the 2081/92 regulation) is various according Northern and Southern countries. But the justification of the common regulation is based on Common Agricultural Policy: it can be of great interest to articulate the protection of OLP with environmental stakes or products traceability.

The respective roles of EC and national states in the protection of OLP is various: PDO seem to be more national concern when PGI are more at European level. Perhaps, problems of distortion are due to that fact and some PDO in a country A are considered as PGI in a country B. How to increase the coherence of the 2 categories?

Eventual modifications of the actual regulation can be anticipated. But giving more power to EC can reduce the notion of PDO, even if the European position could be reinforced by more internal coherence. And what is the place of quality assessment in these dynamics?

### B. National applications within EU

#### *Administrative management (A. Gracia)*

Some states are organised on a very decentralised pattern (like Spain or Germany) and the geographical indications are logically included into federalism redistribution of competencies. Costs of procedures, duration of decision-making, and complexity of administration offices involved are various. We need an overview of all these differences within EU. In addition, the 2081/92 regulation encountered some limits in the management between national and European levels.

#### *Traditional products (C. Mancini)*

A lot of traditional products are not able to mobilise the 2081/92 regulation. Small production, local market and localised reputation are the main reasons for explaining the fact. Italian state develop a new procedure of recognition: each region list all the local traditional products and authorise simplification in hygienic rules and access to local market. Portuguese researchers think that such initiative can be of major interest for numerous situations in Europe. But, this new category seems too much top-down procedure, without involvement of local producers and no need to change anything in the firms. On a general point of view, we can assume that quite all the European regions need to promote regional marks and face some limitations due to the 2081/92 regulation. In addition, what is traditional and how long must be the historical proof?

#### *Who is in charge of the protection? (E. Barham)*

Trade marks suppose that the firm is able to protect itself against all illegal use. With an official sign, state is substituting to the capacity of each firm and assume the legal protection for all official users. So, even the small producers have effective protection and this is a very important ethical issue of the regulation.

It suppose that the states are impartial and, even when a delegation of control is done, a supervision is checked by an official board. The question of penalties appears as a lack of the actual management, at a national level, as well as a European level.

### C. Local dynamics

#### *Linkage between product and territory (D. Barjolle)*

Justifications of the name reservation is referred to several factors. It is of major interest to understand well the basis for each PDO and PGI product. In particular, the combination between human and natural (or bio-physical) factors is important. Reputation is a very particular factor (explicitly mentioned in the PGI definition) and requires a deeper approach.

### **Objectivations and controls (B. Martin)**

In some speciality of PDO cheese, it is possible to demonstrate the linkage between feeding animals and flavour of cheese. But, even if these mechanisms of physical linkage are put in evidence, there is no interest in searching the molecule of typicality (still possible to synthesise and add). At the contrary, the evidence of mechanism give (i) importance to the local management by the producers (and how to improve this linkage ?) and (ii) justification to the reservation of geographical indication. The assessment of these products leads to the need of local involvement and, only in case of doubt, analytical references are mobilised.

### **Initiatives and strategic choices (A. Fragata)**

The local level is the good one to observe how the producers make their decision on choosing the right kind of protection : PDO, PGI, Organic product, Traditional product, etc. It is possible to combine some of them as origin and organic. It is still essential to understand what are the interests of each type of producers during the building of local agreements : Phenomena of exclusion are observed in some situations.

Is it always possible to improve quality and profit ? Is specialisation an obligation for each participant in a collective protection ? These are points of discussion which can explain why several marginal areas meet difficulties to mobilise the 2081/92 regulation.

## **1.2.2. Main issues**

### **A. Definition of OLP's**

The definition of OLPs has to be made definitively, taking into account the work made by the other WP.

The legal point of view about the definition is the following. The problem of definition of OLPs is large : Geographical Indication are only part of the concept. The " indication of source » are also part of the concept of OLPs. Figurative trademarks with generic geographical indication like region or country (for the small countries) are also part of the concept. For the legal point of view, collective trademark with geographical indications are only permitted in the case of figurative trademark.

The geographical names or designation for very small products not applying for PDO-PGI protection are also part of the concept. In some cases, this is a very complex question (see Mancini's contribution). So, the different problems faced by every type of OLPs have to be studied. From PDO situations, passing by PGI to "indication of source", this design a large range of concrete diversity.

Lastly, the collective trademark may be a way to obtain a certain provisional protection (first step). Yet the geographical indication as such is not protected against imitations or misuses through the trademark protection, but due to the distinctive character of the sign. And all efforts in building reputation can always be took over.

### **B. European regulation as result of compromise (historical point of view)**

- ?? International context of European protection, in particular the influence of world approach (TRIPS).
- ?? National influences on the agreements about PDO, including the problems of distortion within EU. Problems in the adoption at the beginning of the regulation 2081/92.
- ?? Creation of PGI and the differences between national constraints.
- ?? Legitimacy of the regulation 2081/92 : which goal is more important for the citizens: rural development, consumer's protection, unfair competition, etc...
- ?? There is a need of empirical research evidences about the benefits of the reg. 2081/92 in these different topics, in order to convince the other parties in the frame of international negotiations about GI's protection.

### **C. National implementation of the application of EC regulation 2081/92**

Regulation 2081/92 asks for a national law to be implemented in each country. Nevertheless, the question of national objection procedure is not well regulated in each country: this is a weakness of the current situation not to have been implemented an national objection procedure at each national level.

- ?? National integration into the institutions: different cultures and history which leads different level of requirements to be proposed at the EC-level.
- ?? Creation of commissions for validating the local projects, composition and decision-making.
- ?? The national institutions and laws can charge the procedure in a proportional amount regarding the work made.



#### **D. Certification and Controls**

- ?? 2 different levels of controls : producers controls and misusing controls. There are 3 levels of supply chain controls: self-controls, controls by the certification body, accreditation of the certification body. There is an additional public control made in order to fight frauds and misuses of names and labelling.
- ?? There is a need of a complete review about this subject all over Europe, concerning the methods, the costs and the procedures. The problem of credibility is very important, also the problem of the controls.
- ?? The problem of the certification costs is very important. The internal control are more appropriate and the external controls are to be considered as controls about internal controls. Elsewhere the external controls are generating too high costs.

#### **E. Dynamics of Local Production Systems related to EC regulation**

- ?? Normalisation process. Relationship between local organisations and technical contents (elements to be protected, connection with traditional dimensions, etc.), at the same time justification of the protection and basis of control procedures,
- ?? Resources specification. How to rely biological materials to manage and local knowledge to insure and to transmit
- ?? Local competencies and decision-making. To be clarified the influence of various types of producers (farmers, industrials, retailers, commercial, etc.) and the role of scientists.
- ?? Relationship with Competition Law. In particular, restricted access to market and questions of "traceability" (origin and process modality).

### **1.3. RECOMMENDATION FOR NEW RESEARCH**

#### **A framework for future exchanges**

All along the 5 main issues, we pointed out several needs of new production of knowledge.

As a possibility to organise the further researches, a 5 points framework is proposed by Jim CHEN (USA) :

- ?? Jurisdictional system
- ?? Responsibilities registration monitoring
- ?? Enforcement, exclusivity, remedies
- ?? Potential for exchange
- ?? Purposes, interests and compromises

### **1.4. POLICY RECOMMENDATIONS**

#### **Some issues from D4B Report**

Geographical Indication (GI) protection are part of intellectual property rights. The inclusion of the regulation 2081/92 in the agricultural policy does not still make this clear. It could be an improvement of the regulation to expressly state the intellectual property nature of GI's in the reg. 2081/92.

Reg. 2081/92 may need to be amended in order to extend its scope to products beyond the agri-food field, should WTO negotiations on extension succeed (demand driven by Switzerland, certain east Europe and developing countries).

## Part II

# Literature review WP 1

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Belgium  
France  
Germany  
Italy  
Portugal  
Spain

(FUL-SEED, Arlon)  
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