2018

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Position Paper

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EDA comments on draft DG SANTE implementing act on rules for voluntary origin labelling

EDA in principle welcomes the new version of the draft Implementing Regulation on rules for voluntary origin labelling (version published for public consultation from 4 January - 1 February 2018), especially because trademarks and geographical indications will not be covered by the scope of the Regulation (Art.1.2). We believe that this is a step in the right direction, showing the EU continues to maintain protection of the intellectual property of the European companies, as well as the EU quality schemes.

However, the current draft text implies that specific rules on trademarks and GIs might be adopted in the future. We believe that the exclusion of trademarks and GIs should be permanent and therefore not be covered by any specific rules in the future. We would like to take this occasion to reiterate the position of the European dairy sector that trademarks, brand names and GIs should be clearly excluded from the scope of the Regulation, for the reasons explained in our detailed comments below.

We would also like to take this occasion to encourage a rapid adoption of harmonised European rules on voluntary origin labelling in order to stop the process of disruption of the internal market caused by introduction of national rules on mandatory origin labelling in several Member States.

EDA General comments:

1. **Trademarks and brand names should be excluded from the scope of any future specific rule mentioned in recital 7 and art. 1.2.**

- EDA would like to reiterate that trademarks are not intended to inform consumers about the country of origin or place of provenance of the food and should therefore not trigger Article 26(3).

- Trademarks are not explicitly mentioned in Art. 26 (1), contrary to GIs. Therefore, trademarks do not fall under the scope of art. 26 (3) and the legal considerations are therefore different than the ones for GIs. This should be recognised and amended in recital 7. Future specific rules are therefore not necessary and art. 1.2. should also be amended accordingly.

- The aim of a trademark is to distinguish the goods or services of one undertaking from those of other undertakings, and not to provide information about the origin (or other characteristics) of a good (definition laid down in Trademark Directive (EU) No 2015/2436). In practice, trademarks and brand names allow consumers to identify a new company or to recognise a company from which they expect certain standards, e.g. regarding taste, quality, environmental or social policies.

- A different approach, which would consider statements, terms, pictorial presentation or symbols, included in the trademark, such as indication of the country of origin or place of provenance of the food, would be disproportionate and unjustified towards the European companies, especially considering that consumer protection is already ensured by the existing legislative framework:

- Trademarks are regulated under a separate legal framework which highlights that their purpose is to distinguish between goods and not to indicate origin. Trademarks Directive (EU) No 2015/2436 prevents any use of the trademark that would mislead the consumer.

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- More specifically, Directive (EU) 2015/2436 prevents any use of the trademark that would mislead the consumer by requiring that trademarks which might deceive the public as to the geographical origin of the goods shall not be registered or, if registered, shall be liable to be declared invalid.

- In addition, the Food Information Regulation (EC) No 1169/2011 reinforces the protection of consumers by requiring the mandatory indication of the country of origin where failure to indicate this might mislead the consumer as to the true country of origin of the food, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin.

- Article 26.2 of Regulation (EC) No 1169/2011 prevents consumers from being misled. In a potential situation when a trademark or a brand name could mislead the consumer as to the true country of origin of the product, then the problem would be solved by applying the compulsory indication under Article 26.2 of Reg. 1169/2011, i.e. indication of the last substantial transformation.

- This would be the case, for example, when there are several indications relating to a geographical place (i.e. terms, colours, pictorial representations) on a trademark of a product which is produced in a different country from the indications and symbols which are part of the trademark. In such a case, in order to avoid any consumer confusion as to the true country of origin of the product, the product label shall specify the place of production.

2. Geographical indications (PDO, PGI, TSG) should be also excluded from the scope of the Regulation

- The quality schemes are regulated under regulation (EU) No 1151/2013 – PDO, PGI and TSG logos are clearly established by the EU to indicate a recognised process of production, and the use of the logo is mandatory for registered products[1]. These logos are recognised by consumers who buy such products.

- We believe that it is not correct to say in recital 6 that GIs fall under the scope of art. 26 (3) FIC. Art. 26 (1) FIC only stipulates that the rules on voluntary origin labelling will apply without prejudice to labelling requirements provided for in specific Union provisions, particularly the provisions governing the use of PDOs, PGIs and TSGs mentioned above. Both regulatory frameworks therefore apply in parallel as was recognised by the legal service in its notice of May 2014 (Annex). Therefore, GIs should be assessed on a case-by-case basis and not trigger Article 26 paragraph 3 of FIC. Therefore, recital 6 and art. 1.2. should be amended accordingly.

- It would be therefore important for the European dairy industry to not contradict the existing quality schemes given their added value and positive image they bring to the dairy sector from all across the EU and globally. We would therefore request to exclude the European quality scheme logos (PDO, PGI, TSG) explicitly from the scope of the Implementing Regulation.

- In the EU, there are more than 300 cheeses and dairy products registered under quality schemes. According to the report ordered by the European "Commission Value of production of agricultural products and foodstuffs, wines, aromatised wines and spirits protected by a geographical indication (GI)" (2012)[2], the total sales value of GI cheeses in 2010 was 6 307 370 000 EUR (the number of GI cheeses in 2010 was

[1] Reg. (EU) No 1151/2013 on quality schemes for agricultural products and foodstuffs

[2] https://ec.europa.eu/agriculture/external-studies/value-gi_en

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176, while in 2016 it is 249[3]). According to the same report, **sales value of GI cheeses are the most significant among all GI agricultural products and foodstuffs in the EU.**

3. Customary and generic names

- We welcome that the new version of the draft Implementing Regulation excludes customary names and generic names from the scope of the implementing Regulation.

4. De-localising indications under Art.26.2(a) should not be covered

- The draft Recital 4 mentions that art. 26 (3) also includes "*cases where the country of origin or place of provenance is given mandatorily, including in accordance with art. 26 (2) (a)"* of FIC. We would like to request a clarification in the Recital that de-localising indications under Art.26.2(a) should not be covered by the Implementing Regulation. Recital 30 of FIC Regulation expresses that :

  "In some cases, food business operators may want to indicate the origin of a food on a voluntary basis to draw consumers` attention to the qualities of their product. Such indications should also comply with harmonised criteria."

- The clear wording of recital 30 and the provision of article 26.8 in conjunction with article 26.3 prove that only additional information provided following article 26.3 fall in the scope of the Implementing Regulation. Therefore, it should be stated explicitly in a recital of the Implementing Regulation that the de-localising reference according to Art 26 (2) lit a) Regulation (EU) No 1169/2011 does not constitute an indication of the country of origin or place of provenance of the food for the purpose of Art. 26 (3) Regulation (EU) No. 1169/2011.

5. Presentation of the information

- We believe that the double objective to inform the consumer and at the same time to provide industry with the necessary flexibility can be reached, giving the food business operator the choice to place it somewhere on the package, provided that it is clearly visible. These requirements will be sufficient to ensure the consumer is well informed. If there is the necessity to put it in a specific place, we suggest e.g. same field of vision as the origin declaration of the food, or next to the list of ingredients.
- Concerning the proposed requirement of a minimum font size we believe that an implementing act cannot be more restrictive than the rules laid down in the FIC for mandatory information (see art. 9 (2) i) in connection with art. 13 (2) of FIC). Due to the clear wording of the FIC, the final exception in Annex VI Part A No. 4 FIC cannot be transferred into an implementing act of Article 26 (3) FIC.

6. Transition period

- The majority of EDA members supports to have a longer transition period of 2 years - **<u>as from the publication of the implementing act in the EU Official Journal</u>** - to allow implementation of the labelling changes required by the new Regulation.

[3] DG AGRI DOOR database accessed Dec 2016 http://ec.europa.eu/agriculture/quality/door/list.html

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