

TRADITIONAL SPECIALTIES GUARANTEED. EUROPEAN REGISTRATION PROCEDURE.

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ABSTRACT

Legal protection of quality schemes aiming traditional specialties is an important step in extending the copyright protection, as it appears viewed broadly. Apart from the sometimes rigid form of the "right", the regulatory purposes are nothing but a set of rules and regulations designed to satisfy the people who have passed down methods and processes through generations, in order to produce products and food, characteristic to that community.

INTRODUCTION

The specificity of certain traditional production methods and recipes that are at the foundation of the food sold has always assigned an extra value to the products thus completed, being the engine in triggering the growth and maintaining the quality of the remaining food and products in general.

The protection of interests of EU Member States in terms of supporting producers of traditional premises was to establish a system of legal rules and procedures designed to safeguard traditional recipes and production methods and hence European citizens targeted by this kind of products.

MATERIAL AND METHOD

In drafting the article was used the systematic method of interpreting european legal texts, method that consists in establishing the meaning of the legal norm by hiring its economy enactment of that form, or by reference to other laws economy.

RESULTS AND DISCUSSIONS

At European level the Member States have adopted The Regulation (EU) No. 1151/2012 of 21st of November 2012 on quality schemes for agricultural products and food, regulatory document published in the Official Journal number 343L dated 14th of December 2012. Thus were established the system of quality, traditional specialty guaranteed being one of them.

Traditional Speciality Guaranteed targets a specific product or a food which is the result of a process of production, processing or the result of a mixing process - composition, to the extent that these processes correspond to some methods established over time. Also, there are accepted within this category, the food / products that are made of raw materials or ingredients which in turn are consecrated and used in such compositions, traditionally.

In order to talk about a product / traditional food, according to the European Regulatory Framework document, it must meet, in addition to the conditions of differentiation which we shall mention below, the proof of application, using, marketing, for a period of at least 30 years, time designed to ensure intergenerational transmission of specific processes and means of production, manufacturing, blending, etc.

Besides the condition relating to the use in time, to qualify for legal protection, the designation of traditional specialty guaranteed shall fulfil the substantive conditions regarding the product / food. Thus, the applicant must be able to state specifically the characteristics that distinguish clearly the products required to be registered in this system of quality, from the products and foods alike not used in the production process (processing, mixing) traditional methods and / or ingredients / raw materials traditionally established.

In order for a food / product to be registered as a traditional specialty guaranteed, the person concerned must draw up a tender book. The tender book shall contain the following elements: the name proposed for registration, the product description, the method of production and essential elements that define the product's traditional character. In terms of product description, in addition to the elements targeting its identification and general characteristics, the applicant must indicate specifically the physical, chemical, microbiological and organoleptic properties. These descriptions should be targeted at the specific character of its demonstration purposes. The description of the production method will show in a concrete way the steps, terms and other elements that must be respected by manufacturers, including characteristics of raw materials or the ingredients used.

Once drafted the tender book, solicitors may apply to the Commission an application for registration of the quality system. Any association may submit applications for registration of traditional specialty guaranteed, irrespective of their legal form, mainly composed of producers or processors of the same product. It is necessary that these associations, called by the European Regulatory Framework "groups" to prove that they actually work with products / food whose application for registration will be requested, the marketing intermediaries not having this quality. It is worth mentioning that an individual may be treated as a "group" producer under the condition that the person is the sole producer of specialties that wishes to submit an application for registration. In case we are dealing with groups from different EU Member States or EU and third countries, applicants may submit a single application for registration.

The registration application must include: name and address of the applicant group or the individual who meets the above conditions, the tender book prepared under Regulation, and also a declaration of the Member State showing its position on the application submitted in that it fulfils the conditions stipulated by European legislation. In other words, the admissibility of an application before the Commission is subject to the prior verification of the Member State where the applicant comes from. Usually, Member States have similar procedures to those established by the Commission, procedures aiming provisional national registration.

Transposition into national law of European provisions concerning the acquisition of European quality protection system TSG (traditional specialty guaranteed) was conducted by Order no. 1762/2015 issued by the Ministry of Agriculture and Rural Development¹, published in the Official Gazette, Part I no. 627 of 18/08/2015. Nationally, the specialized departments of the Ministry of Agriculture and Rural Development have jurisdiction to review the documentation for the registration and protection of a traditional specialty guaranteed acquisition. Also, a very important role is played by the Registry of systems within the domain of nationally protected quality (RSCPN), the role of public information on the applications submitted for approval to the Commission or on the requests for changes / cancellations sent by the Commission to Romania. According to the regulatory document, the application of protection assigned at national level will be forwarded to the European Commission within 30 days from the acquisition of national protection.

The Commission will review the requests within a maximum of 6 months, period which will only be exceeded in terms of communication to the applicant on the reasons

which led to this exceeding of the deadline. Throughout this period the Commission will publish each month the object for registration and date of its submission. If the Commission considers that the conditions for registration of the legal system as the designation of origin are met, it shall order the publication of the tender book submitted by the applicants in the Official Journal of the European Union.

Within 3 months from the publication, the authorities of a Member State or third country or any natural or legal person that has a legitimate interest and that is established in a third country may submit a request that proves that they oppose to the registration, request called opposition. It is noteworthy that in case of natural and legal persons shall only be admissible oppositions filed by people who do not live / not resident in EU member states. For people residing in EU member states, other than those where the application for registration of the quality system was submitted, they must file an opposition to the Member State of domicile / residence, within 3 months from the publication, and next he/she will file/formulate the opposition to the Commission.

The opposition request must relate mainly to the tender book submitted by the applicant, the conditions that product or food do not meet, they must be inserted in a statement of the authority / person concerned. Without this declaration, the opposition will be declared void. The motivation of the declaration may be filed within maximum 2 months from the date of registration of the unjustified or insufficiently motivated opposition.

The opposition may be admissible only where, in addition to respecting the deadline for submission, it indicates in particular the reasons that lead to the violation of European regulations or the name sought to be registered is similar to that of products whose name has been previous legally registered, products and names that have a reputation and that are economically significant.

The opposition is sent to the applicant.

Once found to be admissible the opposition filed, the Commission invites the parties arguing concerning the quality system, within maximum 3 months from the date of the communication, to conduct negotiations in order to find an amicable solution. This period may be extended at the request of the opponents by three months. Exchange of information, documents, etc., is allowed between the parties, provided that they are subsequently released to the Commission where there is no agreement.

If, following consultations, the parties forward their agreement regarding the registration of the quality system, the Commission takes the registration of the name specialty guaranteed, without the need of the Council opinion on terms established by the Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011 published in the European Journal of the European Union of 28.02.2011, only subject to that the agreement contains no changes or that they are unimportant before the published form of the tender book in the Official Journal.

If the agreement contains unimportant changes against as the originally published form, and if the parties involved in the case did not reach an agreement, the Commission cannot decide on the registration without the consent of the Council, under art. 4 of Regulation (EU) No. 182/2011 of the European Parliament and of the Council of 16 February 2011. In this regard, the Commission shall convene the Committee for agricultural product quality policy, composed of representatives of the Member States for an opinion aces to reject or to review the validity of the opposition filed in relation to the demand of registration, following the specific procedures provided by the legislation.

In the event that, after the performance of publication procedures of the tender book, the Commission does not record the declaration of an admissible opposition within three months, it shall, if the legal criteria of admissibility are respected, acts of implementing the registration of the designation of the specialty guaranteed.

After the registration of the quality system, any group of legitimate interest may apply for approval of some changes of the tender book. The procedure to be followed

varies as talking about minor changes or modifications involving changing the data contained in the tender book. In the latter case, the Commission will be obliged to publish these changes in the Official Journal, and the interested parties (as mentioned above) can wear down the opposition proceedings in the terms and conditions laid down by the European regulation.

Notwithstanding, if minor amendments are requested, the Commission is authorized to approve or reject the request without using the publication procedure. There are considered minor changes in traditional specialties guaranteed any changes that are not related to the essential characteristics of the product, which do not introduce significant changes in the method of production, or do not aim the name change of all or part of the product. Once registered the traditional specialty guaranteed under the law, it begins to produce legal effects within the EU and beyond, the entitled persons enjoying full legal protection. Legal protection is guaranteed for 7 years from the registration date under the condition that the legally registered product be introduced on the market. If it is not inserted for marketing, and when it is found that the products as protected and marketed do not meet the conditions set out in the published tender book, the Commission, ex officio, or upon notification from interested persons, may adopt implementing acts which have as purpose the cancellation of the quality system registration.

CONCLUSIONS

Given the European regulations which has the purpose to "help the producers" of agricultural products and food, and relating to the summary provisions of the Order MARD that is the national common right, we believe that the Romanian legislator should initiate a regulatory document, with the rank of law, in protecting the quality system, because for the moment there are missing many procedural elements that actually guarantee the rights of persons interested in protecting the traditional specialties guaranteed

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