

ACT No. 452/2001 Coll.
of 29 November 2001
on the Protection of Designations of Origin and Geographical Indications
and on the Amendment to the Act on Consumer Protection

PART ONE
PROTECTION OF DESIGNATIONS OF ORIGIN AND GEOGRAPHICAL
INDICATIONS

CHAPTER I
BASIC PROVISIONS

Section 1

Subject matter of regulation

The Act regulates the conditions, under which it is possible to obtain protection relating to designation of origin or, as appropriate, geographical indication, as well as legal effects of this protection.

Section 2

Definitions

For the purposes of this Act:

- a) designation of origin means the name of a region, a specific place or country (hereinafter referred to as “territory”) used for identification of the goods originating from this territory provided that quality or characteristics of this goods are exclusively or predominantly given by special geographical environment with its characteristic natural and human factors and provided that production, processing and preparation of such goods takes place within the defined territory; designation of origin for agricultural products or foodstuffs shall also mean traditional geographical or non-geographical indications for the goods originating from the defined territory if such goods fulfils other conditions according to this provision;
- b) geographical indication means the name of a territory used for identification of the goods originating from this territory provided that this goods has certain quality, renown or other characteristics which are attributable to this geographical origin and provided that production or processing and/or preparation of such goods takes place within the defined territory;
- c) goods means any movable thing which was produced, exploited or otherwise obtained, regardless the level of its processing, and is determined to be offered to consumers; services shall also be deemed as the goods according to this act;

d) generic name of a type of goods shall mean the indication, which became a usual name for such goods, although it relates to the territory where this goods was originally produced or put in the market.

Section 3

Designations of origin and geographical indications are entered in the register of designations of origin and geographical indications (hereinafter referred to as "the register") kept by the Industrial Property Office (hereinafter referred to as "the Office").

Section 4

Exclusions from registration

(1) An indication which, in spite of the fact that its literal reading truthfully identifies the territory from which the goods originates, is capable to evoke a false assumption that the goods originates from another territory, shall not be entered in the register either as designation of origin or as geographical indication.

(2) If the applicant for registration of designation of origin or geographical indication for wines is able to ensure such manner of utilization of these indications which is not capable to evoke a false assumption about the real origin of goods, two or more designations of origin or geographical indications containing identically written or identically reading (homonymous) names of places may be entered in the register provided that the principle of equal position of producers in the market is complied with.

(3) The general name of goods may not be entered in the register as a designation of origin or as a geographical indication, regardless the fact whether the goods originates from such a defined territory.

(4) Subject to the exception stated in paragraph 2, an indication which is identical with already protected designation of origin, geographical indication, well-known trademark or registered trademark, or an indication which is identical with the name of a plant variety or an animal breed, which could lead to deceptive assumptions about the true origin of goods as a result of this coincidence, may not be registered as designation of origin or as geographical indication for identical goods.

CHAPTER II

DESIGNATION OF ORIGIN

Section 5

Application for registration of designation of origin

(1) An application for registration of designation of origin may be filed with the Office by the association¹⁾ of producers or processors (hereinafter referred to as "association") for goods produced or processed or prepared in the territory and under conditions defined in Section 2 letter a). An individual natural person or a legal entity may apply for registration of designation of origin provided that at the time of filing of the application it is the only person

that produces, processes and prepares the goods in the territory and under conditions defined in Section 2 letter a).

(2) If the applicant according to paragraph 1 is an association having no legal personality, it must empower one of members of the association to take part in proceedings according to this act.

(3) The application for registration of designation of origin (hereinafter referred to as "application") filed by the applicant according to paragraph 1 shall contain the following data

a) wording of the designation of origin;

b) name or, as appropriate, business name and seat, or first name, surname and permanent address of the applicant or, as appropriate, of his representative;

c) geographical definition of the territory where production, processing and preparation of goods takes place;

d) specification of the place of business where the goods provided with designation of origin is produced, processed and prepared at the locality whose geographical name creates a part of designation of origin;

e) list of goods to which designation of origin should relate;

f) description of characteristics or qualitative features of goods, which are given by special geographical environment.

(4) The application shall be accompanied by the extract from files kept by a body of state administration²⁾ competent according to the territory where production, processing and preparation of goods takes place, if it is certified that the place of business of the applicant according to paragraph 3 letter d) is situated in given territory or that the goods according to paragraph 3 letter f) is produced or processed by the applicant.

(5) If the designation of origin is to be registered for agricultural products or foodstuffs, which are determined for human nutrition, and agricultural products not determined for human nutrition, whose lists are set down by the Ministry of Agriculture by means of a decree (hereinafter referred to as "agricultural products and foodstuffs"), the application must be supported by specification according to Section 6, which shall stipulate its characteristics and define specialities of geographical environment.

(6) Another producer or, as appropriate, processor who fulfils conditions stipulated by the Act for registration of designations of origin and conditions of membership in association, which shall be neither discriminatory nor in conflict with legally binding rules of economic competition, shall have the right to become a member of association. The association shall be obliged to issue a certificate of membership to its members upon request.

(7) The applicant for registration of designation of origin, who has neither the permanent address nor the seat in the Czech Republic, and who has the designation of origin protected according to the law valid in the country of origin of the goods, may replace the document required according to paragraph 4 by a certificate on protection relating to designation of origin according to the law valid in this country.

Section 6

Specification

Specification must contain

- a) name of agricultural product or foodstuff, including the wording of designation of origin;
- b) description of agricultural product or foodstuff, including raw-material, if any, and description of basic physical, chemical, microbiological and/or organoleptic qualities of agricultural product or foodstuff;
- c) geographical definition of territory or, if need be, the data which give the evidence about fulfilment of requirement according to Section 2 letter a) sentence after semicolon;
- d) data demonstrating that agricultural product or foodstuff originate from the defined territory;
- e) description of a method used for acquisition of agricultural product or foodstuff or, if need be, description of trustworthy and unchangeable local methods of their acquisition;
- f) data confirming the connection between quality, characteristics or features of agricultural product or foodstuff and geographical origin within the meaning of Section 2 letter a).

Section 7

Proceedings relating to application

- (1) The Office shall examine whether designation of origin stated in the application fulfils conditions for registration and whether the application has proprieties according to Section 5.
- (2) Unless the application has all proprieties according to Section 5, the Office shall invite the applicant to complete the application, determine a reasonable period of time, which shall not be less than two months, and give him a notice that otherwise the proceedings will be suspended.
- (3) If the designation of origin is excluded from registration according to Section 4 or if the designation of origin does not fulfil conditions for registration set down by this Act, the application shall be refused by the Office.
- (4) If the application for registration of designation of origin contains all necessary proprieties and if the application is not refused according to paragraph 3, the Office shall enter the designation of origin in the register and announce the registration in the Bulletin issued by the Office (hereinafter referred to as "Bulletin"). A certificate on registration shall be issued to the applicant.
- (5) If the designation of origin is to be entered in the register for agricultural product or foodstuff, the Office may in reasoned cases invite the applicant to submit the evidence in form of a judgement made by inspection body that agricultural product or foodstuff fulfil proprieties of specification stipulated according to Section 6. The Office shall prescribe to the applicant a reasonable period of time for submission of a judgement made by inspection body and give him a notice that in case of failure to submit the judgement of inspection body in time, the proceedings will be suspended.

CHAPTER III

REGISTRATION OF DESIGNATION OF ORIGIN

Section 8

Effects of registration of designation of origin

- (1) Protection relating to designation of origin shall arise on the day of entering in the register. The period of protection relating to designation of origin is unlimited.
- (2) Each person who produces, processes and prepares the goods of relevant quality or characteristics within the defined territory shall be entitled to use the registered designation of origin, especially to place it on the goods to which such designation of origin relates; in case of agricultural products or foodstuffs stated in the decree according to Section 26, the condition for utilization of designation of origin on the goods originating from the defined territory is also the compliance with specification according to Section 6.
- (3) No licence may be granted for the registered designation of origin.
- (4) The registered designation of origin may not be provided as a guarantee.

Section 9

Registration of amendments relating to specification

The applicant for registration of designation of origin may ask the Office for amendments to specification, especially with regard to developments in area of scientific and technical knowledge or as a result of a new definition of territory.

Section 10

Inspection of specification

- (1) Bodies competent to perform inspection of specification according to this Act shall be, based on their scope of authority, the Czech agricultural and food inspection established according to special legal regulation³⁾.
 - (2) Inspection body according to paragraph 1 shall issue obligatory judgements or opinions and/or certificates important for entering the designation of origin in the register. The applicant or the proposer, as the case may be, shall be obliged to submit the judgement of inspection body together with the application for amendments to specification of agricultural product or foodstuff, the proposal for cancellation of registration of designation of origin of agricultural product or foodstuff (Section 11) or, as appropriate, the application for registration of designation of origin of agricultural product or foodstuff.
 - (3) Everybody may request the inspection body according to paragraph 1 for issuance of an obligatory judgement or opinion and/or certificate important for exercise or defence of his right. Inspection body shall be obliged to issue the required judgement or opinion and/or certificate without unreasonable delay.
 - (4) If during performance of inspection activities the inspection body discovers any shortages, it shall be entitled to require their elimination and to take or propose measures for their elimination, including inspection focused on fulfilment of measures leading to elimination of discovered shortages.
 - (5) Results of inspection performed by a foreign inspection body shall be taken into account within proceedings before the Office, based on the international convention or based on
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mutuality. President of the Office may decide in individual case that the judgement of the foreign inspection body shall be taken into consideration even if conditions according to the first sentence are not fulfilled.

Section 11

Cancellation of registration of designation of origin

(1) The Office shall cancel the registration of designation of origin, if it discovers based on proposal from the person concerned or from the relevant inspection body and/or based on its own initiative, that

a) designation of origin was registered although it does not fulfil conditions stipulated by this Act; in this case the designation of origin shall be regarded as if it was not registered;

b) conditions stipulated for registration of designation of origin ceased to exist;

c) based on judgement of the relevant inspection body, the product for which the designation of origin is registered does not fulfil requirements determined by specification for agricultural product or foodstuff and these requirements were not fulfilled additionally within the period prescribed by the inspection body.

(2) In case according to paragraph 1 letter c), registration of designation of origin cannot be cancelled, if the goods complying with conditions stipulated by this Act appears in the market.

(3) In the decision based on reasons stated in paragraph 1 letter b) or c), the Office shall state the day to which the registration of designation of origin is cancelled.

(4) Cancellation of registration of designation of origin shall be entered by the Office in the register and announced in the Bulletin.

CHAPTER IV

GEOGRAPHICAL INDICATIONS

Section 12

Geographical indication

Provisions relating to designation of origin shall apply similarly to proprieties of application for registration of geographical indication, proceedings relating to application for registration of geographical indication, registration of amendments relating to registered geographical indication, contents and inspection of specification for agricultural product or foodstuff, effects of registration of geographical indication, amendments to registration of geographical indication and its cancellation.

CHAPTER V

PROVISIONS RELATING TO PROCEEDINGS

Section 13

Administrative proceedings

(1) Unless otherwise stipulated by this Act, proceedings according to this Act shall be governed by administrative rules⁴⁾, except for provisions about the term for decision.

(2) The Office shall decide about suspension of proceedings if it is unable to continue in proceedings due to incompleteness or defects of filing; before issuing the decision on suspension of proceedings, the person who made request for commencement of proceedings must be informed about it. The Office shall suspend proceedings even upon request of a person who filed the proposal for its commencement.

Section 14

In case of proceedings in application for registration of designation of origin or, as appropriate, geographical indication, persons who have neither their permanent address nor their seat in the territory of the Czech Republic must be represented by attorney or patent representative according to special legal regulations⁵⁾.

Section 15

Register and Bulletin

(1) The register is open to public and everybody has the right to look inside it.

(2) The Office shall enter in the register the following decisive data relating to designation of origin and geographical indication:

a) registration number of the designation of origin or, as appropriate, geographical indication and the date of entering in the register,

b) wording of the designation of origin or, as appropriate, geographical indication,

c) date of filing of the application for registration of designation of origin or, as appropriate, geographical indication,

d) geographical definition of territory where production or processing and/or preparation of goods takes place,

e) name or business name and seat, if any, or first name, surname and permanent address of the applicant or his representative, if any,

f) address of the place of business, which produces or processes and/or prepares the goods provided with designation of origin or, as appropriate, geographical indication at the locality whose geographical name creates the designation of origin or geographical indication,

g) goods, to which designation of origin or, as appropriate, geographical indication relates, including definition of quality and features characteristic for the goods, and whether the goods is agricultural product or foodstuff stated in the decree according to Section 26, its specification, including its amendments, if any,

h) cancellations of registration of designation of origin or, as appropriate, geographical indication.

(3) Other data necessary for designation of origin and for geographical indication may also be entered in the register.

(4) In the Bulletin, the Office announces the registration of designation of origin or, as appropriate, geographical indication, its cancellation and other important facts relating to designation of origin or, as appropriate, geographical indication.

(5) After verification of submitted data, amendments that occurred after registration of designation of origin or, as appropriate, geographical indication, shall be entered in the register upon request.

(6) Upon request, the Office shall issue an extract from register to any person upon request. Extract from register shall contain the data valid as of the day on which such extract from register was issued.

CHAPTER VI RELATIONS TOWARDS FOREIGN COUNTRIES

Section 16

(1) Persons having their permanent address or seat in the Czech Republic may apply for international registration of designation of origin according to the international convention⁶⁾ through the Office.

(2) The applicant for international registration of designation of origin shall be obliged to pay fees for operations according to paragraph 1 set down by the international convention; the amount of fees set down by the international convention shall be announced by the Office in the Bulletin.

Section 17

(1) International registration of designation of origin with the application for protection in the Czech Republic shall have the same effects as the registration of designation of origin kept by the Office.

(2) If the protection relating to internationally registered designation of origin was refused for the territory of the Czech Republic, it shall be regarded as if it was not registered within the Czech Republic.

CHAPTER VII PROTECTION OF DESIGNATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS ACCORDING TO THE LAW OF EUROPEAN COMMUNITIES, ON THE PROTECTION OF GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS

Section 18

Application for protection

- (1) An application for protection of designations of origin and geographical indications in the European Union⁷⁾, which relate to agricultural products and foodstuffs produced or processed and/or prepared in the territory situated within the Czech Republic, shall be filed with the Office.
- (2) The application may be filed only by a person stated in Section 5 having the right for designation of origin or, as appropriate, geographical indication.
- (3) Unless the application contains proprieties according to this Act and proprieties required by the regulation, the Office shall invite the applicant to eliminate the shortages within two months.
- (4) The Office shall cede the application to the Commission⁸⁾, including all documents supporting its findings, within two months from the day when the proper application was delivered to the Office. The Office shall inform the applicant about this fact.
- (5) The Office shall inform the applicant about formal findings of the Commission, that the application contains all data, within one month from the day on which these findings are received.

Section 19

Amendments to specification

Provisions of Section 18 shall similarly apply to filing, verification and cession of the application for amendments to specification.

Section 20

Objections

- (1) Persons having their permanent address or seat in the territory of the Czech Republic may file duly justified objections against the registration of designations of origin and geographical indications in the register of protected designations of origin and protected geographical indications kept by the Commission or, as appropriate, objections against amendments to specification relating to identification of product or, as appropriate, geographical indication.
- (2) Objections shall be submitted not later than within five months from the day on which the Commission published the name and address of applicant, the name of product, main items of application and references to national legal regulations relating to production or processing and/or preparation of products, including reasons for conclusion that the name fulfils conditions of protection, in the Official Journal of the European Communities.
- (3) If the submitted objections are duly justified, the Office shall cede them for further proceedings.
- (4) The Office shall refuse to cede objections to the Commission, if they are filed after the term stipulated in paragraph 2; the person who submitted objections must be informed about this fact.

Section 21

(1) If the Commission invites the parties concerned to reach an agreement about objections against the registration of designation of origin or, as appropriate, geographical indication in the register kept by the Commission, the Office in cooperation with a relevant body of state administration shall be competent to lead discussions on behalf of the Czech Republic. Before conclusion of agreement, the Office shall be obliged to request the standpoint of a person who filed an application for protection of designation of origin or, as appropriate, geographical indication according to Section 18, or of a person who submitted objections against registration of such indication according to Section 20.

(2) The Office shall be entitled to require that a person who filed an application according to Section 18, or a person who filed objections according to Section 20, should provide at his own expense the judgement or opinion and/or certificate from the relevant inspection body, which are important for enforcement of objections against registration of designation of origin or, as appropriate, geographical indication in the register kept by the Commission or for defence against such objections.

(3) The Office shall inform the Commission about the standpoint of the Czech Republic as regards the results of discussions relating to objections.

(4) The Office shall inform the applicant or to a person who submitted objections according to Section 20, as the case may be, about the decision made by the Commission as regards the objections.

Section 22

(1) Registration of designation of origin or geographical indication in the register of protected designations of origin and protected geographical indications kept by the Commission shall have the same effects in the Czech Republic as registration of such indications in the register kept by the Office.

(2) If the Commission refuses to enter designation of origin or geographical indication in the register of protected designations of origin and protected geographical indications, the entry in the register kept by the Office shall lose its effect too.

(3) Inspection bodies, which control compliance with specification in case of agricultural products or foodstuffs whose designation of origin or, as appropriate, geographical indication is entered in the register kept by the Office, shall be obliged to perform activities according to Section 10 also in relation to agricultural products or foodstuffs originating from the territory situated in the Czech Republic, whose designation of origin or, as appropriate, geographical indication is entered in the register of protected designations of origin and protected geographical indications kept by the Commission.

CHAPTER VIII

RIGHTS FROM REGISTRATION OF DESIGNATION OF ORIGIN AND GEOGRAPHICAL INDICATION

Section 23

(1) Registered indications are protected against

a) any direct or indirect business utilization of registered indication for the goods to which the registration does not relate, if such goods is comparable with the goods registered under this indication or if utilization of this indication takes advantage of a good reputation of protected

b) any misuse, imitation or suggestion, even if the real origin of goods is stated or the indication; protected indication is translated or accompanied by terms like “sort”, “type”, “method”, “style”, “imitated” or by similar terms;

c) any other false or deceptive data about geographical origin, nature or basic qualities of the goods stated on inward or outward packing, promotion materials or documents relating to respective goods, as well as against the use of transportation packing capable to evoke a false impression about its origin;

d) all other conduct which could lead to deceptive assumptions about true origin of goods.

(2) The registered indication may not become a generic indication of goods; if the registered indication itself includes also the name of goods, which is considered to be generic, the use of this generic name on the respective goods is not in conflict with paragraph 1 letter a) or b).

Section 24

Jeopardy or infringement of rights

(1) Everybody may claim with the relevant court that it should be prohibited to use the registered indication for comparable goods which does not fulfil conditions for utilization of designation of origin or geographical indication and that the goods identified in a manner which jeopardises or infringes the rights arising from registered designation of origin or, as appropriate, geographical indication, should be withdrawn from the market.

(2) A person having rights to registered designation of origin or, as appropriate, geographical indication, shall have the right, towards everybody who puts or intends to put comparable goods in the market, for information about origin of the goods, on which the protected designation of origin or geographical indication is placed; the court shall not acknowledge the right for information if it is in disproportion to seriousness of jeopardy or infringement.

(3) A person having rights to registered designation of origin or, as appropriate, geographical indication, may ask the court to order that a person jeopardising or infringing these rights should destroy the goods whose release in the market could jeopardise or infringe, or has already jeopardised or infringed, the rights protected by this Act. The court shall not order destruction if such goods is not in ownership of the person against whom the proposal is directed or if jeopardy or infringement of rights could be eliminated in another way and destruction would be inadequate to this jeopardy or infringement.

(4) If the infringement of rights arising from registered designation of origin or, as appropriate, geographical indication caused damage, the damaged party shall be entitled to its compensation. If such infringement caused other than property related detriment, the damaged party shall be entitled to a reasonable satisfaction, which may consist in monetary fulfilment. A person having rights for registered designation of origin or, as appropriate, geographical indication, may ask for release of unreasonable enrichment.

CHAPTER IX

TRANSITIONAL PROVISIONS, PROVISIONS OF AUTHORISATION AND REVOCATION

Section 25

Transitional provisions

(1) Provisions of this Act shall be used, unless otherwise stipulated in the international convention by which the Czech Republic is bound and which was published in the Collection of Acts or in the Collection of International Agreements.

(2) Products, to which the protection relating to designation of origin was granted according to existing regulations before entering into force of this Act, shall enjoy the protection relating to designation of products according to this Act.

(3) Proceedings relating to applications for designation of origin of products which were not concluded before entering into force of this Act, shall be concluded according to this Act while the applicant shall be obliged, upon invitation from the Office and within the period stipulated by the latter, to put his application in conformity with requirements laid by this Act on applications for registration of designation of origin.

(4) Provisions of this Act shall govern relations arising from designation of origin of products entered in the register before entering into force of this Act. Origination of these relations as well as claims arising from them before entering into force of this Act shall be judged according to regulations valid at the time of their origination.

Section 26

Provisions of authorisation

The Ministry of Agriculture shall determine, by means of a decree, the lists of agricultural products and foodstuffs where the application for registration of designation of origin must be supported by specification.

Section 27

Revocation Provisions

The following legal regulations shall be revoked:

1. Act No. 159/1973 Coll. on the Protection of Appellations of Origin of Products.
2. Order of the Office for Inventions and Discoveries No. 160/1973 Coll. on Proceedings in Matters relating to Appellations of Origin of Products.

PART TWO

Amendments to the Act on Consumer Protection

Section 28

In the Act No. 634/1992 Coll. on Consumer Protection, as amended by the Act No. 217/1993 Coll., the Act No. 40/1995 Coll., the Act No. 104/1995 Coll., the Act No. 110/1997 Coll., the

Act No. 356/1999 Coll., the Act No. 64/2000 Coll., the Act No. 145/2000 Coll., and the Act No. 258/2000 Coll., shall be amended as follows:

In Section 2 par. 1 letter r) at the end of the point 3, full stop is replaced by comma, and the point 4 is completed, including the footnote No. 4f, to read as follows:

“ 4. product or goods, infringing the rights of a person entitled to protection of registered designation of origin or geographical indication ^{4f)} .

^{4f)} Act No 452/2001 Coll. on the Protection of Designations of Origin and Geographical Indications and on Amendments to the Act on Consumer Protection.”.

PART THREE

ENTRY INTO FORCE

Section 29

This Act shall enter into force on 1 April 2002, except for provisions of Sections 18 to 22, which shall take effect on the day of entering into force of the Convention on Accession of the Czech Republic to the European Union.

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- 1) For example Section 69 of the Act No. 455/1991 Coll. on Small Businesses, as amended by later Regulations, the Act No. 83/1990 Coll. on Association of Citizens, as amended by later Regulations, Section 20f and following and Section 829 and following of the Act No. 40/1964 Coll., Civil Code, as amended by later Regulations.
 - 2) For example Section 60 of the Act No. 455/1991 Coll., Section 12c of the Act No. 105/1990 Coll. on Private Business Activities of Citizens, as amended by later Regulations, the Act No. 63/1986 Coll. on the Czech Agricultural and Food Inspection, as amended by later Regulations.
 - 3) Act No. 63/1986 Coll. on Czech Agricultural and Food Inspection, as amended by later Regulations.
 - 4) Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Rules), as amended by later Regulations.
 - 5) Act No. 85/1996 Coll. on Legal Profession, as amended by Later Regulations and Act No. 237/1991 Coll. on Patent Representatives, as amended by later Regulations.
 - 6) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of 31 October 1958, revised at Stockholm on 14 July 1967, published under No. 67/1975 Coll. as amended by the decree No. 79/1985 Coll.
 - 7) Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs.
 - 8) Articles 211 to 219 of the Treaty Establishing the European Community.