

LAW
ON THE PROTECTION OF GEOGRAPHICAL INDICATIONS OF PRODUCTS
AND SERVICES

Part One
BASIC PROVISIONS

Content of the Law

Article 1

(1) This law regulates the subject matter of protection by geographical indications and designations of origin, procedure for their protection and acquisition of the right to use them, the scope of protection and infringement of the rights, their relation to other intellectual property rights, cancellation of their registration, and legal protection.

(2) The provisions prescribed by this Law relating to geographical indications shall also apply to designations of origin, if not otherwise provided.

Geographical Indication

Article 2

(1) A geographical indication shall protect the name of a specific place (locality), a region, or in exceptional cases, a country in which a product or a service originates (hereinafter: the place of origin), with a quality, reputation or other characteristics regarded to be essentially attributable to its geographical origin.

(2) A geographical indication of a product shall be granted protection if the process of its production, processing, or preparation is carried out in the place of origin.

(3) A geographical indication of a service shall be granted protection under the condition that a particular activity is registered at the place of origin, or that the person who has the direct control of the business management is a national or a resident of the country in which a particular service originates. Other conditions may also be stipulated, like for instance, the evidence from the country of origin that a person is qualified for providing a particular service, or the evidence of the membership in a professional association of the persons providing that service in the country of origin, if the service is provided outside the place of origin.

(4) The characteristics of a product or a service referred to in paragraph (1) of this Article can be due to natural factors (climate, soil, etc.) and/or human factors (special methods of production and processing, traditional methods and skills, etc.) existing in the place of origin.

Designation of Origin

Article 3

(1) A designation of origin shall protect the name which designates the geographical origin of a product or a service which has specific quality or other properties essentially or exclusively due to inherent natural and human factors of the geographical environment, and to the process of production, processing and preparation which is entirely carried out in the place of origin.

(2) A designation of origin of a product shall be granted protection if the product considered also complies with the requirements provided for by a special legislation.

(3) A designation of origin of a service shall be granted protection only if the service is provided in the place of origin.

Origin of Raw Materials

Article 4

A product may be protected by a designation of origin if the raw materials used for its production originate from a geographical area larger than or different from the processing area provided that the production area of the raw materials is limited, that special conditions for the production of raw materials exist, and that there are inspection arrangements to ensure that these conditions are adhered to.

Traditional Names

Article 5

Traditional geographical or non-geographical names designating a geographical origin of a product or a service, which satisfy the requirements referred to in Articles 3 and 4 of this Law may be protected only with a designation of origin.

Exclusion from Protection

Article 6

A geographical indication shall not be granted protection if the name of the place of origin of a product or a service:

1. does not meet the requirements provided by this Law,
2. is the same as the name of a plant variety or an animal breed and is liable to mislead the public as to the true geographical origin of the product or the service;
3. is not, or cease to be protected, or has fallen into disuse in the country of origin.

Generic Names

Article 7

(1) A geographical indication shall not be granted protection if the name of the place of origin of a product or a service where it was originally produced or marketed, has become the common name for a certain type of product or service (generic name).

(2) The name of the place of origin protected by a geographical indication may not become generic during the period of protection provided by this Law.

Homonyms

Article 8

If the names of two or more places of origin of a product or a service are the same or almost the same in writing (homonyms), the protection of such geographical names shall be granted to all the interested parties that comply with the requirements provided for by this Law, and by the Regulations governing the implementation of this Law (hereinafter: the Regulations), on the principles of equitable treatment of the producers on the market and truthful informing of consumers, except when it is liable to mislead the public as to the true geographical origin.

Part Two

PROCEDURE FOR THE GRANT OF PROTECTION

Establishing of Protection

Article 9

(1) The protection of a geographical indication or a designation of origin shall be established by registering the geographical name of a product or a service in the register of protected geographical indications or protected designations of origin respectively.

(2) The right to use a protected designation of origin shall be acquired by the grant of the right and by its registration in the register of users of designations of origin.

The Office Authority

Article 10

(1) Administrative procedures relating to the protection of geographical indications shall be performed by the State Intellectual Property Office (hereinafter: the Office) by applying the provisions of this Law, and the Regulations, and by subsidiary application of the Law on the General Administrative Procedure.

(2) The Office shall also grant the protection of geographical indications in compliance with the international agreements related to the protection of geographical indications, the Republic of Croatia being a party thereof.

(3) The Office shall keep the register of geographical indications, register of designations of origin, register of users of designations of origin, and the records of users of geographical indications.

(4) The data entered into the registers and records referred to in the previous paragraph of this Article shall be prescribed by the Regulations.

Filing of the Application

Article 11

(1) The procedure for the grant of the protection of a geographical indication and/or acquisition of the right to use a designation of origin shall be initiated by filing a document comprising a request for the registration of a geographical indication and/or of the right to use a designation of origin into the register, together with the other essential items prescribed by this Law (hereinafter: the application).

(2) The application may be filed by:

(a) natural or legal persons acting as producers of products, or providers of services, and associations having capacity to acquire rights and incur liabilities relating to protection and the right of use;

(b) authorities, associations of consumers, institutions and chambers interested in the protection of a geographical indication within the scope of their activity.

(3) Natural or legal persons as well as associations interested in the protection of a geographical indication from a foreign country (hereinafter: foreign persons) may file an application and acquire the rights in accordance with the provisions of this Law and international agreements, or on the principle of reciprocity if so provided by the legislation of the country the foreign person comes from. Foreign persons shall have the right to practice before the Office in relation to geographical indications only through authorized agents who are registered in a special register of the Office (hereinafter: authorized agents).

The Application Form

Article 12

(1) The application shall be written in the Croatian language and in the Latin-script on the application form specified by the Regulations, with all the necessary documents enclosed.

(2) A foreign person filing an application shall together with the application for the registration of a geographical indication, also supply a certified copy of an official document, or other legal document, written in the official language of the country of origin, providing evidence that the geographical indication is protected in that country, as well as a certified translation of the same document in the Croatian language.

The Application Request

Article 13

(1) A request from the application may refer to the protection and recognition of the right to use only one geographical indication relating to only one type of products or services.

(2) Shall the Office establish that the request from the application filed for the protection of a designation of origin does not comply with the specified requirements, the request shall be examined as if relating to the protection of a geographical indication.

The Content of an Application

Article 14

(1) The application shall contain:

A) A request for registration of a geographical indication including the following:

1. the data identifying the applicant;
2. the name of the product or service, as well as the name of the geographical indication;
3. an evidence that the product or service, i.e. raw materials originate in a specified place of origin, or evidence about their connection with the place of origin within the meaning of the provisions of this Law, with a map and description of the area, if needed;

4. an evidence that the product or service meets the requirements in compliance with special legislation or enclosed description (specification);
5. an evidence on payment of the application fee and all the costs due;
6. the applicant's signature.

and/or

B) A request for registration of the rights to use a designation of origin including the following:

1. the data identifying the user;
2. the name of the product or service, as well as the name of a designation of origin;
3. the evidence that the product or service, i.e. raw materials originate in the place of origin, and that all activities of production, processing, or preparation of the product are being carried out in the place of origin, within the meaning of the provisions of this Law;
4. the evidence that the product or service complies with the requirements in accordance with special legislation and/or description from the register;
5. the evidence on payment of the application fee and all the costs due;
6. applicant's signature.

(2) The applicant shall provide evidence about the compliance with the requirements referred to in items (3) and (4), subparagraphs (A) and (B) of paragraph (1), on the basis of documents issued by the competent ministry, i.e. Croatian Chamber of Economy, unless other competent authority in the Republic of Croatia, or in the country of origin has been authorized.

Conditions for Filing the Application

Article 15

(1) The applicant shall supply to the request for registration of a geographical indication referred to in item (b) of paragraph (2), Article 11 of this Law an evidence for at least one producer or provider of a service complying with the requirements referred to in items (3) and (4), subparagraph (A), paragraph (1) from the previous Article of this Law.

(2) A domestic applicant shall supply to the request for registration of a designation of origin referred to in item (a) of paragraph (2), Article 11 of this Law also the request for the registration of the right to use the designation of origin.

Examination and Publication of the Application

Article 16

(1) The application shall be examined by the Office for compliance with Articles 11 to 15 of this Law and, if necessary, the Office may request the supplementary information and documents, and ask for deficiencies to be remedied within the period not longer than six months in the manner specified in the Regulations. Should the applicant not proceed accordingly and within the term provided, the application shall be rejected by the Office.

(2) If the application complies with the provisions referred to in the preceding paragraph, the Office shall publish the application data in the Office Official Gazette according to the provisions of the Regulations. The Office shall rule the administrative decision relating to the request for the grant of right to use a protected designation of origin without publication of the application.

Opposition Procedure

Article 17

(1) Any person having a legitimate interest may file with the Office a notice of opposition to the application, regarding its conformity with the provisions of this Law, supported by appropriate evidence, within a period of three months following the date of the publication of the application in the Office Official Gazette.

(2) Should the opposition be filed, the Office shall examine it, and if found justified, it shall be accepted by the Office, and the request from the application shall be refused. Should the opposition be found unjustified, it shall be rejected, and the application shall be entered in the register, and the data concerning the administrative decision shall be published in the Office Official Gazette in the manner specified in the Regulations.

(3) The Office may notify the applicant about the grounds specified in the filed opposition, in the course of examination of opposition justification, in estimation that his statement shall be necessary prior to the ruling of an administrative decision on opposition.

(4) If no opposition is filed within the period specified in paragraph (1) of this Article, the Office shall enter the application into the register. After the ruling of an administrative decision in relation to the grant of the right to use a designation of origin, and the registration in the Office register, the Office shall issue a certificate to the applicant in accordance with the Regulations.

(5) No appeal shall be allowed against the administrative decision ruled by the Office, nevertheless an administrative litigation proceeding may be directly initiated.

Protection Term

Article 18

(1) The protection term of a geographical indication shall not be limited.

(2) The right to use a designation of origin shall be renewed for periods of every 10 years, counting from the date of registration. The holder of rights shall file an application for the renewal of the right to use a designation of origin in the manner specified in the Regulations.

(3) The renewal of the right to use a designation of origin shall be approved if the requirements for acquiring the right of use have been met. Otherwise, the right of use shall cease on the day of expiration of a 10-year period of protection. The registration of the renewal of the right shall be made as provided by the Regulations.

Procedure Costs

Article 19

(1) The costs of the procedure, opposition, or any other request shall be born by the applicant or a person filing an opposition, or other request, in the manner and to the amount as prescribed by a special legislation.

(2) If the person referred to in paragraph (1) of this Article, or his agent shall not act as required by the Office, related to the payment of the administrative fee or any costs due

within the prescribed term, the application, opposition or any other request shall be deemed withdrawn.

(3) A foreign person shall pay the administrative fee and the costs due for a 10-year period of protection of a designation of origin on the territory of the Republic of Croatia irrespective of the number of users, according to the procedure, in the manner and to the amount provided by the special legislation referred to in paragraph (1) of this Article. Otherwise, the application shall be deemed withdrawn, or the right of use shall cease on the expiration date of a 10-year period.

Protection in a Foreign Country

Article 20

The users of a geographical indication in the Republic of Croatia may file with the Office a request to protect in a foreign country or in a organization of countries the geographical indication which is already protected in the Republic of Croatia, provided that the users are recorded in the Office register, or entered in the Office records in accordance with the provisions of this Law.

Part Three RIGHT OF USE

Persons Having the Right of Use

Article 21

(1) A protected designation of origin may be exclusively used by the right holders who have the required activities registered in the register of companies, trade register, or some other register, and who carry out these activities entirely on the territory entered in the Office register, in compliance with the requirements entered in the Office register.

(2) A protected geographical indication may be used by the users entered in the users' records, who have the required activities registered in the register of companies, trade register, or some other register, and carry out production, processing or preparation of the product, i.e. provide services on the territory entered in the Office register, and in compliance with the requirements entered in the Office register.

Content and Scope of the Right of Use

Article 22

(1) A user of a geographical indication referred to in Article 21 of this Law is entitled to use in the course of trade the protected name exclusively for designating the type of products and services entered in the Office register. The same user may with the protected name use the sign **ZP** in a circle for a geographical indication, i.e. the sign **I** in a circle for a designation of origin.

(2) A geographical indication may generally be used for designating all products and services in compliance with the requirements provided by this Law. This right shall also

apply to the use of a protected geographical indication on packages, business documents and advertising materials.

(3) A user of a designation of origin referred to in Article 21 of this Law may use special stickers on his product, or while providing services, which shall be approved by the Office. The Government of the Republic of Croatia shall on the proposal of the Office approve the form and the way of application of stickers for the products and services protected by designations of origin in the Republic of Croatia, and shall prescribe by a special legislation the amount of fee for their use.

(4) The users of a geographical indication referred to in Article 21 of this Law shall allow the use of the protected name without any compensation for the purpose of informing and instructing the public in the way which is not harmful to their interests.

Additional Protection of the Right of Use

Article 23

(1) The name protected by a geographical indications may not be used for the products or services which do not have the same origin as that indicated by the geographical indication, even if the true geographical origin is indicated, or if the name of the geographical indication is translated, or accompanied by some additional expressions.

(2) The provisions under paragraph (1) of this Article shall not apply when a geographical indication is the same or similar to the personal name used in the course of trade as the name of a company, or otherwise in business relations, if not misleading the public as to the true origin of a product or a service, which is specified in more detail in the Regulations.

Transferability of the Right of Use

Article 24

(1) The right to use a geographical indication may not be assigned or transferred.

(2) The right to use a designation of origin may be transferred only as a whole to a future user who shall meet all the requirements provided by this Law and after the agreement on the transfer of right has been entered in the Office register. Otherwise, the transfer of the right of use shall not be valid.

Infringement of the Rights

Article 25

The users of a geographical indication may request the prohibition of the acts infringing the rights in the geographical indication as follows:

1. any direct or indirect unauthorized use of a geographical indication for the products that are identical or comparable to the registered products for the purpose of acquiring financial gain;
2. any unauthorized use of a geographical indication, even if the true geographical origin of the product is indicated, or a geographical indication is translated, or accompanied by additional expressions;

3. any use of a geographical indication that is detrimental to, or takes advantage of the reputation of a protected geographical indication;

4. any use of false or misleading information as to the geographical origin, nature and quality of a product or a service on the packaging, advertising materials or other documents, giving the impression of the relation between a product or a service and a protected geographical indication;

5. any other practice liable to mislead the public as to the geographical origin of a product or a service.

Part Four RELATION TO OTHER DISTINCTIVE SIGNS

Relation to the Existing Geographical Indications

Article 26

The provisions of Article 25 of this Law shall not extend to geographical indications that have been used in a continuous manner with regard to the same or related products and services either for a continuous period of at least 10 years prior to the date of the signature of the Agreement Establishing the World Trade Organization (hereinafter: WTO Agreement) concluded on April 15, 1994, or in good faith preceding the same date.

Relation to Trade Marks

Article 27

(1) Where a geographical indication has been filed for registration, the application for the registration of a trade mark that contains or consists of the geographical indication in the cases referred to in Article 25 of this Law shall be refused, and in the case of subsequent registration of the trade mark, the trade mark shall be declared invalid.

(2) A claim against an application for the registration of a trade mark under the first paragraph of this Article may be asserted by an interested party within five years of the publication of the trade mark, and a claim against a registered trade mark under the first paragraph of this Article may also be asserted within five years of the day of its registration.

(3) The validity of a registered trade mark shall be maintained and its use may continue where the application for registration of the trade mark was filed in good faith and registered, or where the right of use was acquired by use in good faith before filing the application for registration of a geographical indication, i.e. before other form of protection has been granted in its country of origin, or before the expiration of one year from the date when the WTO Agreement came into force in the Republic of Croatia.

Part Five CANCELLATION OF REGISTRATION

Cancellation on Grounds of Nullity

Article 28

(1) The administrative decision on the protection of a geographical indication or the recognition of the right of use shall be declared null and void in the procedure before the Office, if established that the geographical indication from the outset has not satisfied the prescribed requirements for the recognition of the right.

(2) The administrative decision under paragraph (1) of this Article may be at any time declared null and void in whole or in part either ex officio or at the request of a party, or a state attorney.

(3) The administrative decision by which the administrative decision under paragraph (1) of this Article has been declared null and void is final. There shall be no appeal against this decision, but an administrative litigation proceeding shall be possible.

(4) If the authorized inspection or other authorized body or group of users shall prove that the products or services of the users of a protected geographical indication are not in compliance with the requirements specified in the register, the Office shall upon their reasoned request declare the administrative decision null and void and shall cancel the user's entry in the register as provided by the Regulations.

(5) The Office shall also in other cases of the termination of protection of a geographical indication and the right of use, rule an appropriate decision and cancel the geographical indication or the right of use in the register.

Effects of Cancellation on Grounds of Nullity

Article 29

(1) The cancellation of the registration of a geographical indication in the register on the basis of the final court or Office decision on the grounds of nullity shall be binding for all the users of the geographical indication in the manner decided by the court. The final court decision submitted to the Office shall be entered in the register and published as provided by the Regulations.

(2) When the registration of the rights in the register is canceled by the final decision of the court or the Office on the grounds of nullity, the effects of that registration shall be deemed to have been void ab initio, but it shall not extend to the following:

a) any final court decision in infringement proceedings relating to the geographical indications, being enforceable prior to the final court decision on nullity, respectively final administrative decision of the Office on nullity declaration;

b) any contract concluded and fulfilled prior to the final court decision on nullity, respectively final administrative decision of the Office on nullity declaration, however, partial or total repayment of sums paid under the relevant contract may be claimed on the grounds of equity, if by the court evaluation found justified under the circumstances.

(3) The exceptions referred to in paragraph (2) of this Article shall not affect the legal proceedings subject to the provisions relating to compensation of damage or to unjust enrichment.

Part Six LEGAL PROTECTION

Civil Proceedings

Article 30

(1) Any interested person may appeal for the protection of rights before a competent Commercial Court in the Republic of Croatia against the person infringing any of the rights referred to in Article 25 of this Law, with the request for:

1. establishment of the existence of an infringement;
2. prohibition and prevention of the acts infringing the rights;
3. compensation for damages incurred;
4. confiscation of the goods produced or marketed with the aim of infringement, and of the equipment used directly to produce such goods;
5. submission of the documents of the infringing party relating to the unauthorized use of a geographical indication on goods or otherwise, for the assessment of the damage incurred;
6. enforcement measures to prohibit or prevent the continued infringement of rights, and in particular enforcement measures for the destruction of the goods and equipment referred to in item 4 of this paragraph;
7. publication of the court judgment, at the expense of the defendant .

(2) Any disputes arising from the infringement of the rights referred to in Article 25 of this Law shall be settled by the court at an urgent proceedings.

(3) On the proposal of the plaintiff, the court may rule on emergency measures in accordance with the Enforcement Law if any delay should cause an irreparable harm to the right holder, or where there is demonstrable risk of evidence being destroyed.

Offenses

Article 31

(1) A legal entity that uses without authorization directly or indirectly a geographical indication for the products that are identical or comparable to the registered products for the purpose of acquiring financial gain, even if the true geographical origin of the product is indicated, or a geographical indication is translated, or accompanied by additional expressions; that uses a geographical indication in a manner which is detrimental to, or takes advantage of the reputation of a protected geographical indication; that uses false or misleading information as to the geographical origin, nature and quality of a product or a service on the packaging, advertising materials or other documents, leaving the impression of the relation of a product or a service with a protected geographical indication; or does any other practices liable to mislead the public as to the geographical origin of a product or a service shall be punished by a fine of 5,000.00 up to 50,000.00 kunas (Article 25).

(2) A natural person and the responsible person in a legal entity who refuses to give information about the origin and the manner of obtaining such products, when found to be in possession of the products illegally produced or put in the market as referred to in Article 25 of this Law, shall be punished by a fine of 1,000.00 up to 5,000.00 kunas.

(3) For the offenses referred to in paragraph (1) of this Article, the responsible person in a legal entity shall be punished by a fine of 6,000.00 up to 60,000.00 kunas.

(4) For the offense referred to in paragraph (1) of this Article, a natural person shall be punished by a fine of 1,000.00 up to 5,000.00 kunas.

(5) A natural person shall be punished by a fine of 20,000.00 kunas for the offenses referred to in paragraph (1) of this Article committed for the purpose of unlawful acquiring of financial gain.

(6) The objects intended or used for the committed offenses referred to in paragraph (1) of this Article shall be confiscated and destroyed.

Part Seven

TRANSITIONAL AND FINAL PROVISIONS

Application of this Law on Pending Procedures

Article 32

(1) All the procedures related to the protection of appellations of origin or acquiring the rights of use pending on the day of application of this Law shall be continued under the provisions of this Law.

(2) The appellations of origin recognized and registered pending on the day of application of this Law shall have the legal force as designations of origin under that name, and acquiring the rights to use them shall be established under the provisions of this Law.

(3) If a protected geographical indication shall subsequently comply with the requirements on the protection by designation of origin, the authorized person referred to in paragraph (2), Article 11 of this Law may initiate a regular procedure in accordance with the provisions of this Law and the Regulations.

Implementing Provisions

Article 33

The Regulations for the implementation of this Law shall be enacted by the Director of the Office within the period of six months counting from the date this Law enters into force.

Termination of the Effect of Other Provisions

Article 34

With the day of application of this Law, the provisions of the Industrial Property Law ("Narodne novine" – the Official Gazette of the Republic of Croatia, No 53/91, 19/92, 61/92 and 26/93) in part concerning appellations of origin of the products shall cease to be in effect except for the provisions on representation (Article 172a) which shall apply until the enactment of special regulation.

Entry Into Force

Article 35

This Law shall enter into force on the eighth day upon the publication thereof in "Narodne novine" – the Official Gazette of the Republic of Croatia, and shall apply from January 1, 2000.