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► **To cite this version:**

Alice Di Concetto. Animal Welfare Standards in the EU Official Geographical Indications. World-wide Perspectives on Geographical Indications, Centre de Coopération Internationale en Recherche Agronomique pour le Développement [Cirad], Jul 2022, Montpellier, France. hal-03791365

HAL Id: hal-03791365

<https://hal.science/hal-03791365>

Submitted on 29 Sep 2022

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Animal Welfare Standards in the E.U. Official Geographical Indications

Alice Di Concetto¹

Abstract – Geographical Indications under E.U. law guarantee “value-adding” attributes to consumers. While the regulation guarantees some of the inherent and external value-adding attributes of a product, such as its local origin and ingredients; it has largely neglected many other aspects related to the methods of production. One aspect that has become crucial to consumers is the treatment afforded of animals used in the making of a food product.

Keywords – Animal welfare, consumer information, food labelling.

INTRODUCTION

On its face, the body of rules governing geographical indications in European Union (E.U.) law only regulates claims that inform consumers on the geographical provenance of a product. Yet, the act governing these rules, the Quality Scheme Regulation¹ pertains to much more than just a “location-of-origin” food label. Rather, this regulation establishes a variety of standards related to the quality of food products, referred to in the act as “added value” or “value-adding attributes.”²

The Quality Scheme Regulation qualifies these value-adding attributes from the dual perspective of tradition and sustainability, as opposed to less sustainable, industrial production methods. The Legislature thus sets general standards that the specifications of an official geographical indication should comply with, and leaving the details of these specifications for the producers to define. In doing so, the Quality Scheme Regulation pursue two goals: ensuring fair competition on the agricultural market and protecting consumers from misleading claims.

The Quality Scheme Regulation has, however, fallen short of ensuring high levels of consumer protection. While the regulation guarantees some of the inherent and external value-adding attributes of a product, such as its local origin and ingredients; it has largely neglected many other aspects related to the methods of production. One aspect that has become crucial to consumers is the treatment afforded of animals used in the making of a food product.

It is reasonable to think that quality schemes should include animal welfare standards that go beyond legal requirements given that consumers naturally associate high quality food standards with improved animal welfare. Yet, very few of the official geographical specifications – Protected Designation of

Origin (PDO) and protected geographical indication (PGI) – contain animal welfare standards.

This omission potentially result in misleading consumers into buying products they likely consider to be more humane compared to non-certified products.

This contribution will therefore show the limited extent to which high levels of animal welfare is taken into account in EU official geographical indications and the issues this poses to consumer protection in the E.U. Lastly, this contribution will formulate recommendations for reform to inform the upcoming revision of the Quality Scheme Regulation.

DEFINING ANIMAL WELFARE IN E.U. LAW

E.U. law does not provide a definition of animal welfare, a concept born out of industrial animal agriculture³ and which the animal advocacy movement has attempted to re-appropriate over the past 20 years. While the industry considers animal welfare standards primarily as standards aiming to mitigate the deleterious effects of industrial production methods on the physical and mental health of animals, animal advocates consider animal welfare standards as rules ensuring minimum level of protection to animals. In practice, both animal protection organizations and industrial animal agriculture agree that the welfare of animals should be guaranteed. In theory though, the industry takes animal welfare into consideration only to the extent that the welfare of animals contribute to increasing the profitability of their business model – by achieving low mortality or higher food safety levels, for instance – while animal protection organizations pursue the implementation of high animal welfare standards for ethical reasons.

Animal welfare as a law and policy concept was developed in the late 1960’s in Europe⁴ around a framework that would later define acceptable farm animal welfare levels: the Five Freedoms. The Five Freedoms posit that animals should be “free from” hunger or thirst ; discomfort; pain, injury or disease; fear and distress; and “free to” express normal behaviour.⁵ The E.U. Legislature later relied on the Five Freedoms to enact its farm animal welfare legislation between the late 1970s until the late 2000s.⁶

³ Jocelyne Porcher, Le « bien-être animal » existe-t-il ?, *Economie Rurale* (2005).

⁴ Roger Brambell, Report of the Technical Committee to Enquire Into the Welfare of Animals Kept Under Intensive Livestock Husbandry Systems, Great Britain Parliament, H.M. Stationery Office (1965).

⁵ *Ibid.*

⁶ European Commission, “Animal Welfare,” https://ec.europa.eu/food/animals/animal-welfare_en (visited on February 1st 2022).

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² *Ibid.*, e.g. Recitals 34, 46.

From a legal perspective though, the Five Freedoms did not produce any prescriptive effects given their unspecific wording. For instance, the Five Freedoms never specify which acts of violence should be prohibited. As a result, E.U. farm animal welfare legislation only ensures farm animal welfare to a minimal level. E.U. law still allows the use of cages, high density levels, mutilations, and long-distance transport. Furthermore, virtually all methods of slaughter are allowed under EU law, including those deemed to cause “unnecessary suffering” by the European Commission’s own advisory agency.⁷

REGULATING FARM ANIMAL PROTECTION LEVELS THROUGH CONSUMER INFORMATION

Given the shortcomings of E.U. animal welfare laws and the difficulty of obtaining ambitious legislative reforms, animal advocates have turned to increased transparency in the production of animal source foods as a way to better inform consumers and incentivize producers to employ more humane farming methods. In that context, many organizations have focused their work on enacting specific food labels to inform consumers on the level of welfare afforded to farm animals, with limited results.⁸ However, almost no European advocates, researchers, and policymakers identified the necessity to regulate misleading information being communicated to consumers regarding the welfare of farmed animals on food packages. Yet, similarly to greenwashing in the early 2000s, “humanewashing” has now become a common industry malpractice. But unlike greenwashing, such a malpractice is largely left unregulated by authorities. Even more concerning is the fact that some official food labels, such as the E.U. Geographical Indications, can contribute to delivering doubtful claims on the welfare of farmed animals.

MISLEADING INFORMATION ON FARM ANIMAL WELFARE AND E.U. GEOGRAPHICAL INDICATIONS

Improved Animal Welfare as a Characteristic of EU Food Quality Schemes

The E.U. Geographical Indications, which are the Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) labels, are regulated under Regulation 1151/2012 on Quality Schemes for Agricultural Products and Foodstuffs (“Quality Schemes Regulation”).⁹ The Quality Schemes Regulation has two specific objectives, which are to “[secure] return for farmers and producers for the qualities and characteristics of a given product [...] and [provide] clear information on products with specific characteristics linked to geographical origin, thereby

enabling consumers to make more informed purchasing choices.”¹⁰ Thus, EU Quality Schemes, and GI in particular, are not limited to informing consumers on the local origin of a product, but inform consumers on its qualities and characteristics of its mode of production. Among these characteristics is improved animal welfare, as the Quality Schemes Regulation further requires that “an agricultural product or foodstuff bearing such a geographical indication should meet certain conditions set out in specifications, such as specific requirements aimed at protecting the natural resources or landscape of the production area or *improving the welfare of farm animals*” (emphases added).¹¹

A 2019 European Court of Justice (ECJ) case further bolsters the claim that animal welfare is an essential component of EU quality labels. In that case, the judges of the ECJ concluded that “the placing of the organic logo of the European Union [...] on products derived from animals which have been slaughtered [...] without first being stunned”¹² is not authorized. This decision is partly grounded on ensuring consumer confidence and protecting consumer interests, in making sure that products labeled organic “have actually been obtained in observance of the highest standards, in particular in the area of animal welfare.”¹³ This ruling thus confirms that animal welfare is an essential component of the method of production of foods that are labeled as quality products, and that engaging in practices that are adverse for the welfare of animals, although lawful, can be tantamount to misleading consumers when the meat deriving from those animals are labeled as quality products.

Because consumer confidence is instrumental in achieving the objectives of the EU Quality Food Schemes, the labeling of products under the Quality Schemes Regulation is “subject to the general rules laid down in Directive 2000/13/EC of the European Parliament [...] relating to the labeling, presentation and advertising of foodstuffs, and *in particular the provisions aimed at preventing labeling that may confuse or mislead consumers*”(emphasis added).¹⁴

The animal welfare component in the method of production of quality labeled products is all the more crucial in a context where “52% of EU citizens look for an animal welfare friendly identifying labels when buying products.”¹⁵ The inclusion of animal welfare standards in EU quality schemes thus mitigates the risk that consumers use quality labels as a proxy for buying higher animal welfare products.

Animal Welfare Malpractices on Pigs Farm Supplying GI-Labeled Ham

Even though the E.U. Quality Schemes Regulation considers animal welfare as an attribute of Geo-

⁷ Opinion of the Scientific Panel on Animal Health and Welfare related to the welfare aspects of the main systems of stunning and killing the main commercial species of animals, The EFSA Journal (2004);

Opinion of the Scientific Panel on Animal Health and Welfare related to the welfare aspects of the main systems of stunning and killing applied to commercially farmed deer, goats, rabbits, ostriches, ducks, geese and quail, The EFSA Journal (2006).

⁸ Alice Di Concetto, Food Labeling and Animal Welfare, European Institute for Animal Law & Policy (2021)

⁹ Regulation 1151/2012 on quality schemes for agricultural products and foodstuffs, 2012 O.J. L 343/1-29.

¹⁰ *Ibid.*, Recital 18.

¹¹ *Ibid.*, Recital 23.

¹² Case C-497/17, Œuvre d’Assistance aux Bêtes d’Abattoirs (OABA) v Ministre de l’Agriculture et de l’Alimentation, 26 February 2019.

¹³ *Ibid.* Paragraph 51

¹⁴ Article 2(1)(a), Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labeling, presentation and advertising of foodstuffs, 2000 O.J. L 109.

¹⁵ European Commission, Special Eurobarometer 442, “Attitudes of European Towards Animal Welfare,” p.4 (2015).

graphical Indications, investigations and official audits have revealed the gap existing between consumers' perception of the method of production, and the reality, which is that nothing in the law requires that quality labeled products must abide by high animal welfare standards.

- *Jambon de Bayonne* PGI

In 2018 and 2019, investigations reported mass-scale abuses on pigs used in the production of *Jambon de Bayonne* in the Tarn region of France. Reports by investigators revealed that the practices on farms benefitting from the *Jambon de Bayonne* PGI were similar to common practices on industrial farms: the use of gestation crates, high stocking densities, and mutilations were the norm.¹⁶ Reports also recorded high mortality rates. In one case, the mortality rate exceeded average, and veterinary inspection services had to euthanize 11 animals.¹⁷ The specifications of the *Jambon de Bayonne* PGI do not contain any requirements in terms of animal welfare, and even require that all male pigs be castrated for the meat to benefit from the PGI.¹⁸ Additional investigations reported that the castration of male piglets without anesthetic or the administration of analgesics was a common practice in the industry.¹⁹

- *Prosciutto di Parma* PDO

Similarly, a series of on-farm investigations conducted in Italy revealed the poor animal welfare conditions in which pigs used for *Prosciutto di Parma* PDO were kept, sometimes in violations with the Pigs Directive. Violations included stocking densities above maximum legal levels, the absence of enrichment materials in pens, and routine tail docking of pigs. The investigated farms were also in violations of sanitary standards, as investigators reported the presence of rodents in the animals' enclosures. Official audits carried out by the European Commission further substantiated the method of production employed on these farms were similar to industrial practices.²⁰

The specifications of the *Prosciutto di Parma* PDO only contain vague animal welfare requirements, and merely impose that "the structure and facilities for the raising of animals must guarantee animal welfare" with no further details.²¹ CSQA, the official

certifier for *Prosciutto di Parma* PDO, is equally vague as to the animal welfare standards producers should comply with.²²

REMEDIES TO ENSURE ALIGNMENT OF CONSUMERS' PERCEPTION WITH ANIMAL WELFARE STANDARDS IN E.U. GEOGRAPHICAL INDICATIONS

In 2020, the E.U. executive announced the revision of the Quality Schemes Regulation. Such a revision is an opportunity to ensure that E.U. geographical indications no longer contribute to humanewashing.

Inclusion of Animal Welfare Standards in EU Food Quality Schemes

As per the Recitals of the Quality Schemes Regulation and recent ECJ case law, animal welfare is a component of quality production. The Quality Schemes Regulation should thus explicitly require that specifications for IG labels must include animal welfare good practices with standards that go much beyond legal requirements.

More Robust Enforcement of Animal Welfare Standards

The official controls Regulation should include specific provisions for the inspections of farms where animals are raised for the production of IG products. Farms supplying IG-labeled products should further be subject to stricter controls regarding animal welfare especially when benefitting from agricultural subsidies. Possible sanctions could include the loss of the IG for a minimum period of time and until producers can demonstrate effective changes in the production method.

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¹⁷ L214, Rapport d'enquête, available at: <https://visuels.l214.com/sites/www.l214.com/2018/pages/tarn-avril2018/minisite/L214-Rapport-cochons-Tarn-2018.pdf> (in French).

¹⁸ Cahier des charges de l'indication géographique protégée « Jambon de Bayonne » homologué par arrêté du 3 août 2018 relatif à la modification du cahier des charges de l'indication géographique protégée « Jambon de Bayonne » (JORF du 24 août 2018), point 5.5.1. (Fr.).

¹⁹ Welfarm, Des cochons castrés à la chaîne sans anesthésie : enquête chez jambon de Bayonne, <https://welfarm.fr/enquete-jambon-bayonne> (in French).

²⁰ European Commission, DG Sante, Final report of an audit carried out in Italy from 13 November 2017 to 17 November 2017 in order to evaluate member state activities to prevent tail-biting and avoid routine tail-docking of pigs (2018).

²¹ Provvedimento del 3 marzo 2014, Modifica del disciplinare di produzione della denominazione "Prosciutto di Parma" registrata in qualità di Denominazione di Origine Protetta, Gazzetta Ufficiale della Repubblica Italiana 18-3-2014, n.64, p.31 (It.).

²² CSQA, Piano dei Controlli del Prosciutto di Parma DOP, p.11, 15, 21, 29 and 31 (It.).