

PART VIII

INFRINGEMENTS, SANCTIONS AND PROCEDURES

Article 38

Any actions involving disciplinary proceedings as and when deemed necessary will be taken in accordance with the terms described in the present Regulations and in line with Law 25/1970 dated 2 December entitled “The Statutes of Vines, Wines and Spirits”, Decree 835/1972 dated 23 March which serves to approve the Regulations thereof, Royal Decree 1945/1983 dated 22 June which regulates infringements and sanctions regarding consumer rights and agricultural produce, the applicable Law 30/1992 dated 26 November regarding the Legal System concerning Public Administrations and the General Administrative Procedure as well as any other general rules and regulations applicable at the time of the sanction.

Notwithstanding, all of the principles and guarantees described in the Penal Code will be upheld at all times.

In order for the previous rule to be applied, this must be done in accordance with the terms described in the Royal Decree 4189/1982 dated 29 December, which transfers the functions and services regarding Geographically Certified Labels, viticulture and Oenology administered by the State Administration to the Autonomous Community of Galicia.

Article 39

1. The infringements described in the present Regulations and as accorded by the Regulatory Council will be sanctioned by means of warnings, fines, seizure of the goods, a temporary ban on the use of the Geographically Certified Label and being struck off the corresponding Register or Registers as described in the following articles, notwithstanding any other sanctions which may be taken for breaches of the existing general legislation which may also be applied as and when appropriate. Should various different regulations be found to apply simultaneously, then the procedures described in the penal principles will be applied.

2. The rates of the fines to be applied will be determined in accordance with the terms described in Art. 120 of the Decree 835/1972.

Article 40

The sanctions to be applied for infringements committed by person or persons registered with the Geographically Certified Label in accordance with the terms described in Art. 129.2 of the Decree 835/1972 are as follows:

A) Administrative Faults

Incidences of administrative faults will be sanctioned with a warning or a fine amounting to 1-10% of the value of the goods affected. Such faults generally include mistakes or omissions in the declarations, entries, logbooks, transit certificates and other documents which serve to guarantee the quality and origin of the goods, especially the following:

1. Falsifying or omitting information and warrants as and when required for registration with the various Registers.
2. Failure to notify the Regulatory Council of any changes to the information supplied upon registration as and when such changes occur.
3. Falsifying or omitting information regarding the production and production movements.
4. Any other breaches of the terms of the Regulations or of the agreements of the Regulatory Council regarding the matters dealt with in Section A) hereof.

B) Breaches of the terms described in the Regulations regarding the production, elaboration, maturation and characteristics of the certified cheeses

Such infringements will be sanctioned with fines ranging from 2-20% of the value of the affected goods, with the possibility of also issuing a confiscation order.

These infringements include the following:

1. Failure to comply with the terms of the applicable regulations regarding milk production, conservation and transport.
2. The use of milk for Geographically Certified cheeses which does not comply with the conditions described in the present Regulations.
3. Failure to comply with the terms described in the regulations regarding the elaboration and maturation of the aforementioned cheeses.
4. The use of products not authorised as such by the present Regulations during the production of the Geographically Certified cheeses.
5. Any other breaches of the terms of the Regulations or of the agreements of the Regulatory Council regarding the matters dealt with in Section B) hereof.

C) Infringements due to the improper use of the Geographically Certified Label or other acts which could cause tort or bring it into disrepute

Such infringements will be sanctioned with fines ranging from twenty thousand Pesetas to twice the value of the affected goods when in excess thereof as well as the seizure of the goods in question.

These infringements include the following:

1. The use of registered names, commercial names, brands, symbols or logos which refer to the Geographically Certified Label as well as the other names associated with it for the commercialisation of cheeses which are not covered by the label.
2. The use of the Geographically Certified Label for cheeses not made, matured or stored in accordance with the terms of the applicable legislation and with the terms of the present Regulations or for cheeses which fail to comply with the sensorial conditions and characteristics required.
3. The improper use of commercial names, brands or labels which have not been approved to that effect by the Regulatory Council for such cases as those referred to in Section C) hereof.
4. The improper possession, trading or use of Geographically Protected Label documents, labels, stamps, etc. as well as the falsification thereof.
5. The dispatching of cheese which do not comply with the quality control parameters described in their adjoining commercial specifications.
6. The dispatching, circulation and commercialisation of Geographically Certified cheeses in packaging not approved to that effect by the Regulatory Council.
7. The dispatching, circulation and commercialisation of Geographically Certified cheeses without the corresponding numbered labels or which fail to comply with the control mechanisms as agreed by the Regulatory Council.
8. Elaboration, maturation or labelling conducted on premises not registered and authorised to that effect by the Regulatory Council.
9. Failure to pay the tax levies as described in the present Regulations on the part of the parties involved as applicable.
10. In general, any action found to be in breach of the terms described in the present Regulations and the agreements of the Regulatory Council which in any way cause a tort to the Geographically Certified Label or bring it into disrepute or which involve an improper use thereof.

Article 41

1. Infringements committed by persons not registered with the Regulatory Council:

a) Improper use of the Geographically Certified Label

b) The use of commercial names, brands, expressions, logos or other signs phonetically or graphically similar to those associated with the Geographically Certified Label or and the characteristic logos and identifying signs thereof, in such a way as to create confusion regarding the origin of the goods in question, notwithstanding any rights acquired for the use thereof as duly recognised by the competent bodies.

c) The use of geographical names covered by the Geographically Certified Label on labels or advertising, including the use of terms such as 'type', etc.

d) Any actions which causes a tort to the Geographically Certified Label or bring it into disrepute or which might lead to confusion on the part of the consumers.

2. Such infringements will be sanctioned with fines ranging from twenty thousand Pesetas up to twice the value of the goods affected when in excess thereof, and including the seizure of the goods in question.

Article 42

The following procedures will be followed when applying the sanctions as described in the previous Articles:

1. Sanctions will be applied at their minimum level when the following conditions apply:

a) Simple irregularities concerning a failure to comply with the Regulations without any direct adverse impact on the consumers and which do not profit the offending party in any way.

b) When the faults are corrected within the allotted period established to that effect by the Regulatory Council.

2. Sanctions will be applied at their mid-level when the following conditions apply:

a) Following repeated failure to provide the information requested, failure to cooperate and failure to grant access to the documentation required by the present Regulations or agreements taken by the Regulatory Council

b) When the infringement in question has a direct adverse impact on the consumers or directly serves to profit the offending party

c) Failure to correct the faults within the allotted period established to that effect by the Regulatory Council.

d) When the infringement is the result of negligence with a failure to comply with the code of practice as specifically agreed to that effect by the Regulatory Council.

e) For any cases when the application of the minimum and maximum levels for sanctions are deemed unsuitable.

3. Sanctions will be applied at their maximum level when the following conditions apply:

a) When there is clear evidence of intent to deceive

b) When the infringement causes serious torts to the Geographically Certified Label, the persons registered with it and the consumers

4. Temporary withdrawal of the right to use the Geographically Certified Label and being struck off from the corresponding Registers may be applied in cases of the infringements described in Point 5 of Section B of Article 40 and in Points 1, 2, 4, 7, 8 and 9 of Section C of article 40.

Temporary withdrawal of the right to use the Geographically Certified Label, not exceeding three months in length, will also imply the loss of the right to receive certificates, seals, labels and other documentation issued by the Regulatory Council.

This will also lead to the offending party being struck off the Council's Registers, thereby foregoing and rights afforded by the Geographically Certified Label.

Article 43

In cases of repeated breaches or when the goods are destined for the export market, the fines applied will be 50% greater than the maximum levels provided for in the present Regulations.

In the case repeated tortfeasors, the fines can be tripled regarding the maximum levels provided for in the present Regulations.

Article 44

1. The Regulatory Council will have the final decision regarding any disciplinary proceedings undertaken if and when the offending party is registered with one of the Council's Registers and when the sanction is not in excess of fifty thousand Pesetas. For all other cases, the Regulatory Council will duly notify the Galician Government Department for Agriculture, Livestock and Woodlands who will handle the case.

2. In the case of sanctions initiated by the Regulatory Council, the Secretary of the Council will instruct the case with the lawyer of the Regulatory Council, or a representative thereof, acting as Secretary.

3. All final decisions regarding the final seizure of products and the fate thereof will be taken by those parties invested with the corresponding powers to rule on the said disciplinary proceedings.

Article 45

In cases where the infringement involves the improper use of the Geographically Certified Label, the Regulatory Council, notwithstanding any administrative actions and sanctions to be taken as appropriate, reserves the right to bring the case before the Courts in order to exercise the civil and penal actions recognised in the Legislation on Industrial Property.