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**THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS
IN THE EUROMEDITERRANEAN AREA:
FOCUS ON THE AGRO-FOOD SECTOR**





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Disclaimer

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Foreword

If we agree that counterfeiting, as suggested by analysts and policy-makers, is a global phenomenon, then we need to go beyond national responses, in each step related to relevant law enforcement and the application of the rule of law. National perspectives do not appear sufficient anymore. A far-reaching analysis is necessary to identify each country's strengths and the possible framework of cooperation that can support us in facing new challenges.

Law-making, prevention or enforcement initiatives may turn out to be ineffective if not integrated in a consistent international system, or if not supplemented by the cooperation of neighboring countries. It is all the more necessary to counter the dynamism and operational capacities of organized criminal networks, which are active both inside and outside the EU.

On this basis we started a new significant project: a comparative analysis of relevant legal frameworks against counterfeiting in Euromediterranean countries, with particular reference to the agro-food sector, aimed at highlighting the solutions adopted by several States against the emerging threat of counterfeiting and food fraud.

The analysis is not an end in itself, but it rather represents a first step towards targeted, shared and global actions in order to prevent and fight counterfeiting.

Besides, the need of clarity and information on the protection of industrial property and the repression of counterfeiting at international level, especially in the agro-food sector, is of great importance to Italian companies which operate abroad and are often confronted to trademark violations.

The research, carried out in cooperation with UNICRI, considers 19 countries that, with the exception of the United Arab Emirates, are located in the Euromediterranean area, namely Algeria, Bulgaria, Croatia, France, Greece, Italy, Jordan, Malta, Serbia, Slovenia, Morocco, Portugal, Romania, Spain, Turkey, Egypt, Lebanon, Tunisia and UAE.

The study is divided in two parts:

- the first provides a comparative analysis of domestic law enforcement systems for the protection of intellectual property rights and geographical indications, dwelling on the differences among national systems;
 - the second offers a country-specific analysis on national intellectual property protection frameworks and sanctions for violations, with a specific focus on geographical indications, appellations of origin and the agro-food sector in general. The study also examines anti-counterfeiting operations carried out at national level by competent law enforcement agencies.
- It has emerged from the analysis that EUMED countries have a rather solid legal framework for the protection of intellectual property, especially in the domain of industrial property.

Besides providing a landscape analysis, the research also aimed at assessing the effectiveness of national legal frameworks, to identify difficulties in the enforcement phase and determine concrete application of available remedies.

The thorough comparative analysis of legal provisions in force in the surveyed countries has revealed lacks of available information at local level: concerning the private sector, despite some notable contributions it did not provide sufficient feedback, while for what concerns enforcement activities of police forces, there are usually no data on the national operations conducted and on the results achieved, except for large transnational initiatives (type Opson Operations) implemented in cooperation with Interpol and Europol.

Orienting international cooperation policies towards greater expertise and sharing of best practices in the fight against counterfeiting, particularly in the Mediterranean area - strategically important for the Italian trade, is also instrumental in bridging, over time, such information gap, whether it arises from an absence of relevant enforcement activities or from a difficulty, on the part of enforcement agencies, in establishing a system for reporting and monitoring data, such as in the case of seizures of counterfeit products.

We are confident that the results of this work will provide relevant insights and may contribute, as an ideal result of the III Meeting of Euro-Mediterranean CNAC held in Rome in November 2014, to strengthen cooperation in the area.

Loredana Gulino

Director General for the fight against counterfeiting - UIBM

Italian Ministry of Economic Development

Executive summary

Counterfeiting and food fraud are growing threats, which put at risk consumers' safety and the protection of intellectual property rights. The alteration of food has become a consolidated illicit business, often managed by transnational organized crime, which is attracted by high profits. Food fraud endangers consumers' health, threaten the reputation of producers and undermine the overall development of the agro-food sector.

The situation is even more complicated considering the increasingly fragmented nature of food supply chain. In this context, the prevention of food fraud plays a key role. It becomes all the more urgent to develop a shared approach at regional and international level in order to deter, identify and counter the infringements of intellectual property rights, food counterfeiting and fraud.

Building on the spirit of cooperation enshrined in the Declaration of Rome on strengthening the fight against counterfeiting in the domain of intellectual property,¹ the present study aims at improving the knowledge of preventive and repressive legal measures which are currently in place in Euromediterranean countries, dwelling on the concrete application thereof. Specific emphasis is placed on national strategies and legal instruments for the protection of quality schemes and of the agro-food sector.

The report examines 19 countries, mainly in the Euromediterranean area (EUMED).² Sixteen of those countries are members of the World Trade Organization (WTO),³ while ten also belong to the European Union.⁴

The research analyzes measures adopted on a regional and national basis to counter the rising threat of counterfeiting and food fraud.

The information hereby provided can support the elaboration of shared strategies against illicit practices and assist national authorities in evaluating possible policy and legal improvements. Specific attention has been dedicated to operations against counterfeiting and food fraud carried out in the Euromediterranean region, coordinated at national and at international level, as well as to the availability of database and statistics for the collection and integration of relevant data on a national scale.

The above elements can contribute to the elaboration of more effective enforcement strategies and to a better knowledge on the impact of counterfeiting and food fraud.

The report presents the existing legal framework in 19 countries, according to official available data and to existing databases of national laws: Wipolex and Faolex - developed respectively

¹ The Declaration of Rome on strengthening the fight against counterfeiting in the domain of intellectual property was signed during the Third Meeting of EuroMediterranean National Anti-Counterfeiting Committees (CNAC) in November 2014.

² Algeria, Bulgaria, Croatia, Egypt, United Arab Emirates, France, Greece, Italy, Jordan, Lebanon, Malta, Morocco, Portugal, Romania, Serbia, Slovenia, Spain, Tunisia and Turkey.

³ Bulgaria, Croatia, Egypt, United Arab Emirates, France, Greece, Italy, Jordan, Malta, Morocco, Portugal, Romania, Slovenia, Spain, Tunisia and Turkey.

⁴ The ten countries are Bulgaria, Croatia, France, Greece, Italy, Malta, Portugal, Romania, Slovenia and Spain.

by the World Intellectual Property Organization (WIPO) and by the Food and Agriculture Organization (FAO).

Data have been verified and supplemented with elements acquired through interviews conducted with national authorities in charge of intellectual property protection and food safety, as well as with private companies and law firms.⁵

Further information has been drawn during a conference organized by UNICRI on October 27th, 2015 at EXPO Milan. The event was attended by representatives from Governments, international organizations, universities, police forces and the private sector.

The report includes a comparative legislative analysis presenting analogies and differences among the considered countries, integrated by individual national dossiers in the annex.

The comparative analysis is made up of eight sections, followed by a presentation of existing challenges and the conclusions, which serve as a blueprint for strategic recommendations.

Sections first and second detail the legal framework for the protection of trademarks, patents, industrial designs and copyright, before turning to the regime of geographical indications.

The research has confirmed the importance of several international treaties⁶ on intellectual property rights to orient the domestic laws of Euromediterranean countries.

As anticipated, the majority of the considered States holds membership in the World Trade Organization and has ratified the Trade-related Aspects of Intellectual Property Rights Agreement (TRIPS), establishing minimum standards for intellectual property rights (IPRs) protection and legal harmonization.

The agreement clarifies that intentional trademark and copyright infringements must be criminally prosecuted in order to ensure compliance with its provisions.⁷

Moreover, the study has highlighted that Euromediterranean countries, including those which are not members of the World Trade Organization⁸, mandate imprisonment for patent infringements.⁹

Provisional and evidence preserving measures are in force in each of the surveyed countries. Such measures are compulsory for EU member States, in accordance with Directive 2004/48/EC on the enforcement of intellectual property rights, which harmonizes the level of protection in relation to civil claims.

⁵ It should be specified that 30% of the surveyed national Authorities responded to the request for information.

⁶ These include: the Patent Cooperation Treaty (1970), the WIPO Copyright Treaty (1996), the Trademark Law Treaty (1994), the WIPO Treaty on the Law of Patents (2000), the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), the International Plant Protection Convention (1951) and the International Treaty on Plant Genetic Resources for Food and Agriculture (2004).

⁷ Article 61 of the TRIPS Agreement.

⁸ Algeria, Lebanon and Serbia.

⁹ With the exception of Malta, which only establishes fines from 232.94 to 11,646.87 euro.

The third section of this research specifies the main analogies and differences in the protection of appellations of origin and geographical indications among national legal frameworks in the Euromediterranean area.

The analysis faced some difficulties due to the lack of a unique and coherent approach in the surveyed countries on protection requirements, effectiveness of actions and costs for obtaining the right to the use of appellations of origin and geographical indications.

Also in this area, international treaties play a significant role. The Lisbon Agreement of 1958 on the Protection of Appellations of Origin and their International Registration and the TRIPS Agreement of 1994, for example, recognize the entitlement to the use of appellations of origin or geographical indications, by virtue of the link between a product (of any kind) and its geographical origin.

Article 2 of the Lisbon Agreement provides:

In this Agreement, "appellation of origin" means the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

The TRIPS Agreement establishes the concept of "geographical indication" as a logical evolution of the appellation of origin. Article 22.1 reads:

Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

With the exception of the United Arab Emirates, all EUMED States which are WTO members have introduced domestic protection for registered appellations of origin and geographical indications, based on the fulfillment of specific requirements, laid down in the national or European *sui generis* law, or on provisions relating to collective and certification marks.

While not adhering to the WTO, Algeria and Serbia have approved specific national standards for the protection of appellations of origin and registered geographical indications.¹⁰ These provisions are not as yet in force in Lebanon. However, a draft law on the protection of geographical indications, covering geographical indications, designations of origin and traditional designations is currently under Parliamentary discussion.

EU member states have implemented TRIPS provisions in four binding regulations: Regulation (EU) No. 1151/2012 *on quality schemes for agricultural products and foodstuff*; Regulation (EU) No. 1308/2013 *establishing a common organisation of the markets in agricultural products*; Regulation (EC) No. 110/2008 *on the definition, description, presentation, labelling and the*

¹⁰ Algeria and Serbia are members of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

protection of geographical indications of spirit drinks; Regulation (EU) No. 251/2014 *on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products*. Moreover, EU countries regulate the registration process through national provisions.

The fourth section analyzes the legal framework in force in EUMED States to combat intellectual property rights infringements and food fraud. Research has shown that there is currently no uniform and internationally binding regulation in this field. Despite considerable efforts to protect food and beverages from chemical and microbiological contamination, less attention in domestic laws has been paid to the issues of food integrity and fraud.

EUMED countries which are members of the EU apply a common set of rules against the adulteration of food and all practices which can mislead the consumer.¹¹

In accordance with these principles, all EU countries have listed illicit conducts, which fall within the concept of food fraud. The definitions adopted at national level share three common elements, namely: (I) the instilment of a false belief about the properties of a product; (II) fraud, as the awareness and willingness to deceive the consumer; (III) profit-making objective.¹²

A similar approach is adopted by EUMED countries which are not part of the EU: it emerges from the comparative analysis that they also prohibit the willful violation of food hygiene and safety requirements. Such infringements, occurring at any step of the distribution chain, are severely sanctioned, along with the violations of the regulations on preservatives, additives, contact materials, and the alteration or misrepresentation of food. In addition, the dissemination of misleading information through marketing campaigns, advertising or misleading statements is prohibited in Jordan, Morocco, Serbia and Turkey - just as in EU countries.

These common elements provide a potential basis for future development of a shared and harmonized notion of food fraud at regional level in EUMED countries.

From a practical standpoint, in EUMED countries which are part of the EU, liability for food safety and fraud prevention is primarily entrusted to food business operators.¹³

Article 19 of Regulation (EC) No. 178/2002 stipulates that in case of breaches of food safety rules, operators should promptly withdraw dangerous products from the market and report the incident to the relevant public authorities. Should the product reach the consumers, the operator has the duty to accurately inform the public over the reasons for the withdrawal and, if necessary, must recall the products already supplied to consumers.

¹¹ Article 8 Regulation (EC) No. 178/2002 does not provide for specific enforcement measures at EU level, but entrusts their adoption to domestic laws.

¹² The main examples include, but are not limited to, the production and sale of food products which are unsafe, unfit for human consumption, not compliant with legal requirements, altered, contaminated, and counterfeit; or which underwent prohibited treatments. In addition, EU Member States punish the falsification of documents or certifications of products, non-compliance with labeling and packaging requirements, along with misleading advertisement.

¹³ See Article 1 letters (a) and (d), and Article 6 of Regulation (EC) No. 853/2004.

Specific withdrawal mechanisms for altered or toxic foods have also been set up in all EUMED countries which are not part of the EU.

However, Algeria, Jordan and Tunisia task administrative authorities with the duty to ensure food safety. Should threats to consumers' health arise, the competent ministries are required to adopt precautionary measures, such as the withdrawal from the market or the seizure of products.

All the surveyed EUMED countries have introduced national legal provisions on official controls against food fraud at all stages of production, processing and distribution. Regulation (EC) No. 882/2004 sets out the most far-reaching provisions in this domain. If inspections reveal evidence of risks to human health or irregularities in food business operations, the competent authorities may: impose sanitation procedures; restrict or prohibit the placement on the market, import or export of goods; request the recall, withdrawal and / or destruction of feed or food; suspend the operation or mandate the closure, in whole or in part, of the concerned company for an appropriate period.

The fifth section offers a comparative analysis of criminal remedies against intellectual property infringements, with a focus on sanctions applicable to the agro-food sector. The research shows that all EUMED countries have developed a system of sanctions against the above violations and punish the placement on the market and sale of food products hazardous to human health. In particular, Bulgaria, Italy, Portugal, Romania, Slovenia, Spain and Turkey have established a dual mechanism, which includes administrative and criminal sanctions, whereas all the other surveyed States provide only criminal penalties, both pecuniary and prison sentences.

France, Spain and Turkey have developed further legal remedies against food law violations and currently adopt the strictest penalties. In particular, French law imposes a term of imprisonment up to seven years and a 750,000 euro fine for the placement on the market of toxic or hazardous food products, as well as if the fraud is committed by an organized criminal group.

Similarly, the considered countries have introduced criminal provisions against the unlawful use of appellations of origin and geographical indications registered and protected under national or European law for foodstuffs, agricultural products, wines (including aromatised wines) and spirits. In particular, Bulgaria, Croatia, Jordan, Morocco, Serbia and Tunisia adopt pecuniary sanctions against the improper use of appellations of origin and geographical indications; whereas in Algeria, Egypt, France, Italy, Portugal, Romania, Slovenia, Spain and Turkey prison sentences may also be imposed.

However, sanctions in force in EUMED countries are generally lenient and do not have a sufficient deterrent effect. In this context, the French system offers a significant exception, as it punishes with a two years term of imprisonment and a 300,000 euro fine the misuse of food

products quality schemes. Severe sanctions are also in force in Algeria, Portugal, Romania and Slovenia, where the misappropriation of protected appellations of origin and geographical indications is punishable by imprisonment up to three years.¹⁴

The sixth section provides an overview of public authorities and police forces involved in fighting counterfeiting and food fraud at national level in the EUMED area.

Currently¹⁵, twelve states have set up a food safety agency, with the task of coordinating and implementing all relevant public initiatives.¹⁶ In the other seven countries, the responsibility is entrusted to several institutions. The EU has also created two agencies for the assessment of food safety risks and the adoption of an effective control system, both in Member States and in third countries exporting to the EU: the European Authority for Food Safety (EFSA) and the Food and Veterinary Office (FVO).

Regulation (EU) No. 386/2012 of 19 April 2012 entrusts the Office for Harmonisation in the Internal Market (from 23 March 2016 known as European Union Intellectual Property Office - EUIPO) with the enforcement of intellectual property rights, including the task to convene representatives from the public and the private sector in a *European Observatory on infringements of intellectual property rights*.

Furthermore, a key role in the fight against counterfeiting is played by Customs Administrations, since they are in charge of protecting intellectual property rights in relation to international trade flows, and by national Police forces. Eight of the surveyed countries dispose of an enforcement agency with an exclusive mandate on counterfeiting and commercial piracy. In Italy, of particular importance in this regard is the work of *Comando Carabinieri per la Tutela della Salute* (CCTS) and of *Nucleo Antifrode Carabinieri* (NAC), two sections specialized in food adulteration and alteration.¹⁷

With reference to food fraud prevention, worth noting is also the expertise of the *Corpo Forestale dello Stato* and the role of the *Ispettorato Centrale della Tutela della Qualità e della Repressione Frodi dei Prodotti Agroalimentari*, under the Ministry of Agriculture, Food and Forestry, which also manages the *Comando Carabinieri Politiche Agricole e Alimentari*.

In Romania a special judicial authority against counterfeiting has been established, which deals specifically with intellectual property rights infringements and coordinates investigations and interventions on a national scale.

¹⁴ See Article 30 of Algerian Ordinance 76-65 on Designations of Origin; Article 325 Portuguese Industrial Property Code; Article 90 Romanian law on trademarks and geographical indications; Article 233 Slovenian Criminal Code.

¹⁵ The research was finalized in September 2016.

¹⁶ These are: the Bulgarian Agency for Food Safety, the Croatian Food Agency, the French Agency for Food, Environmental and Occupational Health & Safety, the Hellenic Food Authority, the Food and Drugs Administration in Jordan, the Food Safety Commission in Malta, the National Office of Food Safety in Morocco, the Economic and Food Safety Authority in Portugal, the National Sanitary Veterinary and Food Safety Authority in Romania, the Administration of the Republic of Slovenia for Food Safety, Veterinary Sector and Plant Protection, the Spanish Agency for Consumer Affairs, Food Safety and Nutrition, the National Agency for Product Sanitary and Environmental Control in Tunisia.

¹⁷ Notably Egypt, Italy, Lebanon, Malta, Slovenia, Spain, Turkey and United Arab Emirates.

In light of the economic implications of such conducts, in Italy, Malta and Slovenia competence is entrusted upon the Financial Police.

The seventh section of the report describes actions taken by EUMED countries to counter the illicit business of counterfeiting and food fraud. The majority of the surveyed States has in fact participated in international operations coordinated by Interpol, Europol, and the World Customs Organizations or by the European Anti-Fraud Office.

Available data reveal that such operations have resulted in the discovery, confiscation and destruction of large quantities of illicit and potentially dangerous products, including toys, cosmetics, cigarettes, vehicle spare parts, electric and electronic items, household items, food, beverages and pharmaceutical products.

Nevertheless, these operations are limited in scope and mostly not followed by national initiatives on a regular basis. Moreover, information exchange for cross-border investigations is still infrequent, which makes it difficult to evaluate the effectiveness of operations in the EUMED area. Finally, the research revealed a lack of available data regarding operations against food fraud.

In light of the above, together with the observed increase in food fraud cases and the involvement of organized crime, there is a need to strengthen controls on counterfeit and fraudulent food products at national and international level, through the contribution of police forces, public authorities and private economic operators.

The eighth section of the report examines the national databases on counterfeiting - in a broad sense ¹⁸- and food fraud, revealing that no aggregate statistics on the enforcement in EUMED area are available to date.

The European Observatory on Infringements of intellectual property rights has introduced a database (Anti-Counterfeiting Intelligence Support Tool - ACIST) which collects and aggregates data on seizures of counterfeit products by European Customs (DG TAXUD) as well as, if available, data on seizures in domestic markets.¹⁹

As far as Italy is concerned, it has emerged that the country has designed and implemented a comprehensive database on counterfeiting, detailing information on the number of seizures, type and quantities of seized products, estimates of their average commercial value and their distribution throughout the country.

In the area of food safety, of particular importance is the EU rapid alert system for the notification of a direct or indirect risk to human health deriving from food or feed (Rapid Alert System for Food and Feed - RASFF). It allows national authorities to exchange information and to identify promptly breaches of food law, as well as to take appropriate measures to cope with potential risks in relation to food or feed.

¹⁸ It includes infringements of trademarks, patents, industrial drawings and designs, misuse of geographical indications and copyright piracy.

¹⁹ IPERICO (acronym of *Intellectual Property - Elaborated Report of the Investigation on Counterfeiting*), is a data base of seizures made by the Italian police forces that work to combat counterfeiting under the guidance of the Ministry of Economic Development, Directorate General for Combating Counterfeiting - UIBM, with the support of a pool of experts of the Guardia di Finanza, the Agenzia delle Dogane, and, at a later stage, of the Criminal Analysis Service of the Home Office. Further information is available at: <http://www.uibm.gov.it/iperico/home/>

Building on the RASFF model and with the aim of strengthening national food safety measures, some EUMED countries that are not members of the EU - Algeria, Serbia and Turkey - have introduced early warning systems.

Finally, the ninth section examines the challenges in the enforcement of the legal provisions discussed in the prior sections. The goal is to identify the main weaknesses and to underline elements which can promote the implementation of more effective anti-counterfeiting and anti-fraud strategies in EUMED countries.

In order to identify relevant challenges, interviews were conducted also with representatives of the private sector (companies, law firms and professional associations) and public institutions (intellectual property offices staff and the judiciary), and a desk review was carried out focusing on databases and of publications from the major players engaged both in intellectual property enforcement and food safety (such as the World Economic Forum, the World Intellectual Property Organization (WIPO), the United Nations Food and Agriculture Organization (FAO), the World Health Organization (WHO), the European Commission, the Bureau of Economic and Business Affairs of the US State Department and the International Intellectual Property Alliance).

Note on research methods

This study presents the legal framework for the protection of intellectual property rights in 19 countries in the EuroMediterranean area, with particular reference to the agro-food sector and deriving from the analysis of different data sources.

In order to identify current legislation on intellectual property rights and food safety in EUMED countries, the databases of WIPO and FAO, Wipolex and Faolex, were first examined. Information gaps were bridged through data from the official websites of national authorities in charge of intellectual property enforcement and food safety.

Further evidence arises from the answers to a questionnaire on the effectiveness of available remedies against intellectual property infringements, distributed in 19 EUMED countries. The invitation to contribute was addressed both to national authorities in charge of intellectual property enforcement and food safety, and to representatives of the private sector - particularly companies and law firms.

Additional elements were collected during the conference organized by UNICRI at Expo 2015. The event was attended by representatives of Governments, international organizations, universities, Italian police and private sector.

Comparative analysis

1. Overview of international conventions on the protection of intellectual property rights

The comparative analysis based on country-specific information has revealed common features among intellectual property enforcement laws in the 19 surveyed EUMED States.

The alignment in domestic provisions is mostly due to the ratification of international treaties on intellectual property, the main instrument for international actors to regulate their mutual relations and to develop cooperation mechanisms. Yet it is worth noting that international treaties generally do not provide for sanctions regimes applicable against shortcomings in implementation from ratifying countries. Equally rare are formal control mechanisms over the effective application of their provisions. In a general sense, and irrespective of the theoretical value of international treaties in Constitutional Law, the stipulation of treaties demonstrates an interest of the Member State for the object of the agreement, but significant discrepancies are often found in the domestic implementation process.

The legal value of international treaties

Conversely, a specific implementation regime is in force for EU legal acts, in particular, for Regulations and Directives. Regulations are binding in their entirety and directly applicable in all Member States, without requiring implementation through domestic provisions. When a Regulation comes into force, it overrides all national laws dealing with the same subject matter and subsequent national legislation must be consistent with and made in the light of the regulation. The EU institutions adopt Regulations with a view to uniform applicable rules in all Member States in relation to a particular matter.²⁰

The legal value of EU Regulations

Directives are instead binding on the Member State as to the result to be achieved, without dictating the means of achieving that result - within a prescribed period.²¹

The legal value of EU Directives

As far as international treaties are concerned, 16 countries out of 19 are members of the World Trade Organisation (WTO) and have ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).²² This matters insofar as the TRIPS Agreement establishes minimum levels of protection of intellectual property rights applicable in Member States.²³

The Agreement harmonizes the definitions of intellectual property rights and aims to ensure adequate standards of protection. Part III of the TRIPS Agreement regulates the enforcement of intellectual property rights: it stipulates that penalties must have a deterrent effect and clarifies that available legal remedies should be fair, equitable, and not unnecessarily complicated or costly. In the same perspective, intellectual property right holders are entitled

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

²⁰ A. Tizzano, R. Adam, *Lineamenti di diritto dell'Unione europea*, Giappichelli (Torino), pp. 135 et seq.

²¹ *Ibid.*

²² The countries are: Bulgaria, Croatia, Egypt, United Arab Emirates, France, Jordan, Greece, Italy, Malta, Morocco, Portugal, Romania, Slovenia, Spain, Tunisia and Turkey.

²³ In July 2016, 164 States hold WTO membership.

to a judicial review of final administrative decisions - in accordance with domestic procedural law - at least on the legal aspects of initial judicial decisions on the merits of a case.²⁴

The agreement also disciplines evidence collection, as well as preventive measures, injunctions, compensation for damages and further penalties. It also specifies that Courts should have the power, under certain conditions, to order the removal or destruction of counterfeit or pirated goods.

Finally, the TRIPS Agreement provides that trademark infringement and copyright piracy on a commercial scale should be prosecuted and that right holders are entitled to assistance from the Customs Administrations to prevent import of counterfeit or pirated goods.

Among the considered countries, Algeria, Lebanon and Serbia are WTO observers and are not bound to the provisions of the TRIPS Agreement.²⁵

However, these countries ensure legal protection of intellectual property rights through civil and criminal remedies, and entrust the Customs administration with the duty to seize counterfeit goods.

Before the TRIPS Agreement, the Paris Convention for the Protection of Industrial Property, adopted in 1883, has been the first international treaty to protect - among others - patents, trademarks, industrial designs, geographical indications, and to prohibit unfair competition. The Convention has been ratified by all the surveyed EUMED countries, including Algeria, Lebanon and Serbia, which are not signatory parties to the TRIPS Agreement. Yet the Convention establishes a less strict protection regime if compared to TRIPS commitments, especially in the field of geographical indications (see below).

Paris Convention
for the
Protection of
Industrial
Property (1883)

Seventeen countries²⁶ have also ratified the WIPO-backed Patent Cooperation Treaty (1970), which enables to lodge a request for patent protection simultaneously in all the Contracting States, by means of an international patent application, addressed to the national patent office of any Member State or, at the applicant's discretion, through the International Bureau of WIPO in Geneva.

Patent
Cooperation
Treaty (1970)

Sixteen countries²⁷ have ratified the WIPO Copyright Treaty (1996), a special agreement under the Berne Convention concerning the protection of creative works and author's rights in the digital environment. State Parties must comply with the provisions of the Paris Act (1971) of the Berne Convention for the Protection of Artistic and Literary Works (1886). Furthermore, the Treaty extends copyright protection to: (I) computer programs, regardless of the forms in

WIPO
Copyright
Treaty (1996)

²⁴ Article 41 TRIPS Agreement.

²⁵ The procedural rules concerning the observer status of a National Government to the General Council and subsidiary bodies of the WTO specify that the purpose of that status is *"to allow a government to better acquaint itself with the WTO and its activities, and to prepare and initiate negotiations for accession to the WTO Agreement."* The Guidelines for Observer Status for Governments in the WTO are annexed to the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council. WTO documents WT/GC/M/1 and WT/L/161, Annex 2 of 25 July 1996.

²⁶ The signatory countries are Algeria, Bulgaria, Croatia, Egypt, United Arab Emirates, France, Greece, Italy, Malta, Morocco, Portugal, Romania, Slovenia, Spain, Tunisia and Turkey. Jordan and Lebanon have not signed the Treaty.

²⁷ The sixteen signatory parties are Algeria, Bulgaria, Croatia, United Arab Emirates, France, Jordan, Greece, Italy, Malta, Morocco, Portugal, Romania, Slovenia, Spain and Turkey. Egypt, Lebanon and Tunisia have not signed the Treaty.

which they are expressed; (II) databases, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations.²⁸

Ten of the considered countries²⁹ have ratified the Trademark Law Treaty (1994), which aims at simplifying and harmonizing national procedures for the application, registration and management of trademarks. The treaty introduces a three steps procedure to be followed by trademark offices, which concerns the application for registration, subsequent amendments to the registration and renewal.

Trademark Law
Treaty (1994)

Six³⁰ out of nineteen countries have ratified - and six have signed³¹ - the Patent Law Treaty (2000), which harmonizes and simplifies the formal procedures for patent registration, at national and regional level. With the notable exception of the rules on filing date requirements, the Patent Law Treaty provides the maximum sets of requirements the office of a Contracting Party may apply.

Patent Law
Treaty (2000)

Seven countries³² have ratified the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), amended in 1967 with the Stockholm Act. In June 2015, The Geneva Diplomatic Conference adopted the Geneva Act that will change the current text, upon completion of its ratification process.³³

Lisbon Agreement
for the Protection
of Appellations of
Origin and their
International
Registration (1958)

The agreement currently in force is intended to ensure the international protection of appellations of origin, namely *the geographical name of a country, region or locality which serves to designate a product that originates and whose quality and characteristics are due exclusively or essentially to the geographical environment, including natural and human factors*.³⁴ These appellations are registered by the International Bureau of WIPO in Geneva, at the request of the competent authority of a Member State. Members of the Agreement are committed to protecting the appellations on their territory by means of the measures, procedures and remedies mandated by domestic law.

However, the Lisbon Agreement has failed to elicit general consensus so far, due to the limited membership, made up exclusively of countries with deep-rooted productive traditions.³⁵ The Geneva Act seeks to address these challenges and, in addition to extending the scope of

²⁸ As regards the author's rights, in addition to those recognized by the Berne Convention, the Treaty provides: (i) the right of distribution; (ii) the right of rental; (iii) a more extensive right of communication to the public. As for the duration, the term of protection should be at least 50 years for any kind of work.

²⁹ The ten ratifying parties are Croatia, Egypt, France, Italy, Morocco, Romania, Serbia, Slovenia, Spain and Turkey. Greece, Malta and Portugal are signatory parties but have not ratified the treaty yet. The other six countries (Algeria, Bulgaria, Jordan, Lebanon, Tunisia and the United Arab Emirates) are not signatory parties.

³⁰ These countries are: Croatia, France, Romania, Serbia, Slovenia and Spain.

³¹ The signatory parties are: Algeria, Greece, Italy, Lebanon, Portugal and Turkey. Bulgaria, Egypt, United Arab Emirates, Jordan, Malta, Morocco, Tunisia are not signatory parties to the treaty.

³² These countries are: Algeria, Bulgaria, France, Italy, Portugal, Serbia and Tunisia. Twelve States (Croatia, Egypt, United Arab Emirates, Jordan, Greece, Lebanon, Malta, Morocco, Romania, Slovenia, Spain and Turkey) have not signed the treaty.

³³ The Diplomatic Conference for the revision of the Lisbon International Agreement was held at WIPO headquarters in Geneva in May 2015. At the end of the Conference, 54 WIPO member states have signed the Geneva Act. These include Algeria, Bulgaria, Croatia, France, Greece, Italy, Morocco, Portugal, Romania, Serbia, Spain and Tunisia.

³⁴ Article 2 of the Lisbon Agreement.

³⁵ A. Vanzetti, *Codice della proprietà industriale*, Giuffrè (2013), p. 550.

protection to geographical indications, it introduces provisions to make the agreement more open and flexible, with particular reference to the level of protection to be granted, the relation with trademark rights, as well as to accession by international organizations.³⁶

All analyzed countries have ratified the International Convention on Plant Protection, adopted in 1951 and amended twice, lastly in 1997, to reflect the latest developments in phyto-sanitation. The Convention identifies suitable measures for the protection of plant resources from parasites (phyto-sanitary measures), and regulates the development of international standards for plant health. It also includes standards for parasites risk analysis and the requirements for creation of parasites-free areas.

International
Convention on
Plant Protection
(1951)

Finally, all Member States have signed³⁷ the International Treaty on Plant Genetic Resources for Food and Agriculture, which provides a basic legal framework for the conservation and sustainable use of plant genetic resources. The Treaty establishes a multilateral system of access to resources and benefit-sharing, in which all members allow reciprocal access to their genetic resources for purposes related to conservation, research, collection, evaluation and documentation.

International
Treaty on Plant
Genetic
Resources for
Food and
Agriculture
(2001)

The Treaty establishes that, in light of specific national implementing provisions, farmers are entitled to: I) the protection of traditional knowledge relevant to plant genetic resources for food and agriculture; II) equitable participation in sharing benefits arising from the use of plant genetic resources for food and agriculture; III) the involvement in decision-making at the national level, on matters relating to the conservation and sustainable use of plant genetic resources for food and agriculture.

³⁶ Further information is available at:
<https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/8693>

³⁷ Malta has signed the Convention but has not yet ratified it.

2. Comparative analysis on the protection of intellectual property rights at national level

An overview of the current legal framework for the protection of intellectual property rights can emerge from the comparison of the models adopted in EUMED countries. The following analysis is aimed at evaluating legal similarities among domestic models, contributing to the emergence of a system of common concepts. At the same time, it highlights the distinctive features of each legal order, emphasizing the respective strengths and weaknesses.

2.1 Trademark protection

The legislation of all surveyed countries provides that, upon registration with the competent public authority, the trademark owner acquires exclusive rights of use and enjoyment of the sign in commercial operations. This principle implies the prohibition for third parties to use, reproduce or register a sign that is identical or similar to a registered trademark, in relation to identical or similar goods or services, if that could create a risk of confusion by consumers.

Registered
trademarks

An important innovation in EU countries has been the adoption, in December 2015, of Regulation (EU) No. 2015/2424, amending the Regulation on the Community trademark, which entered into force on 23 March 2016. The amending Regulation was published on December 24th, 2015 and comes within the framework of EU legislation for the reform of trademark law, which also includes the replacement of the current EU Trademarks Directive (Directive 2008/95/EC). Besides a change in the definition, from Community trademark to European Union trademark, the Regulation abolishes the obligation of visual representation for the sign, thus allowing the registration of so-called *non traditional marks*, such as, for example, trademarks consisting of a perfume.

Regulation
(EU) No.
2015/2424

No obligation
of visual
representation
for the sign

The new rules also protect the legitimate users of appellations of origin, geographical indications and traditional specialties guaranteed, which can object to the registration of identical or similar signs as trademarks. The Regulation has also introduced the so called certification marks, which are applied to distinguish goods or services in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified.

Relation with
Geographical
Indications and
the new
certification
mark

Further modifications concern the examination by the Office of the formalities, in addition to the possibility of seizure of counterfeit goods in transit in the EU.³⁸ However, the full extent of the modifications brought by Regulation (EU) n. 2424/2015 will be clarified with the issuance of implementing acts from the European Commission.

³⁸ The legitimate trademark owner may prevent the mere transit of products identical or similar to the categories of goods for which the trademark is registered in the EU, if the similarity between the products creates a likelihood of confusion among consumers. The text of Regulation (EU) No. 2015/2424 is available at: http://www.wipo.int/wipolex/en/text.jsp?file_id=395078

Should a trademark be well-known on a national scale - in view of a high degree of recognition in the relevant sector by the public and of the value associated with the mark from the public - twelve of the nineteen EUMED countries prohibit the reproduction or imitation of an identical or similar sign in relation to goods or services dissimilar from those for which the trademark gained its reputation, to the extent that the use of that sign would take advantage of the reputation of the well-known trademark, or would be detrimental to the interest of the trademark owner.³⁹ Such measures are currently in force in Bulgaria, Croatia, Egypt, France, Italy, Jordan, Malta, Romania, Serbia, Slovenia, Spain and Tunisia. On the contrary, Algeria, Greece and Portugal only prohibit the registration of signs identical or similar to a well-known trademark, in relation to goods or services identical or similar compared to those for which that mark is registered. Equally prohibited is the registration of signs which are a mere translation of an existing trademark.

Turkey and the United Arab Emirates prohibit the use of a sign similar or identical to a registered trademark regardless of its reputation. The emphasis is rather on the unfair advantage arising from the registration, which would also be detrimental to the distinctiveness or reputation of the earlier mark.⁴⁰

In Morocco, the law does not specify if the registration is prohibited also for goods dissimilar from those associated with the well-known trademark, but allows the legitimate trademark owner to file either an objection against the registration, or a deletion request at a later stage, if the latter trademark is found to mislead the public.⁴¹

As for Lebanon, Resolution 2385/1924 on industrial and commercial property rights does not protect well-known trademarks. However, the competent authorities maintain that an indirect protection is provided by the accession of the country to the Paris Convention for the Protection of Industrial Property.⁴²

2.2 Patent protection

With regard to patents, all the surveyed EUMED countries have adopted provisions recognizing that the inventor of a product or a process, which meets the requirements of novelty, inventiveness and industrial application, has the moral right to claim paternity and the economic right to the commercial exploitation of the invention.

³⁹ The reputation of a mark at national level is established in accordance with Article 6 bis of the Paris Convention for the Protection of Industrial Property, which binds EU countries to “*refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well-known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods.*”

⁴⁰ See Article 9, paragraph c of Turkish Decree-Law 556/1995 on Trademark Protection and Article 10 UAE Federal Law 8/2002 on trademarks.

⁴¹ See Articles 148.2 and 162 of Moroccan Law 23-13, amending and supplementing Law 17-97 for the Protection of Industrial Property.

⁴² As specified on the site of the Lebanese Ministry of Commerce, available at: <http://www.economy.gov.lb/index.php/subCatInfo/2/22>

Therefore, third parties must refrain from producing, selling, using, exporting or importing, or providing for such purposes, the patented product or processes. The same restrictions apply to products obtained directly from a patented process.

In order to prevent infringements, France, Croatia, Malta, Morocco, Serbia, Spain and Turkey also prohibit the unauthorized commercial exploitation of means constituting essential elements of a protected invention, when the third party knows, or ought to know in the circumstances, that those means are suitable and intended for the functioning of a protected invention.⁴³

Prohibition to exploit essential elements of a protected invention

2.3 Industrial drawings and designs protection

All the considered EUMED States allow the registration of industrial designs, intended as the ornamental or aesthetic aspect of an article, which may consist of three-dimensional features, such as the product shape, or two-dimensional features, such as patterns, lines or color. Provided that it meets the requirements of novelty and has individual character, an industrial design can be protected through registration. Our analysis also reveals that all EUMED countries do not allow registration as a design for features of appearance of a product that are solely dictated by its technical function.

Definition of industrial drawings and designs

The registration of a design confers to the holder an exclusive right of use, while prohibiting the unauthorized exploitation by third parties. Conducts of exploitation include the making, offering, marketing, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or storage of the product for the above purposes. Finally, it is worth noting that in ten out of nineteen EUMED countries the exclusive rights conferred by the registration of a design are extended to those designs which do not produce on the informed user a different overall impression from that produced by the prior design relied on.⁴⁴

Exclusive rights of the legitimate owner

2.4 Copyright protection

All EUMED countries recognize moral and economic rights to the author of an original work.

The former include the right of authorship - which belongs to the author even if he/she chooses to remain anonymous or use a pseudonym - the right to determine the conditions for the disclosure of a protected work, to oppose every act which may distort or modify the work, destroy it or use it in ways which are prejudicial to the honor or reputation of the author.

On the other hand, economic rights relate to the commercial exploitation of the protected work, through its reproduction, distribution, public disclosure and transformation.

Exclusive rights of the copyright holder

⁴³ See Article L613-4 of the French Intellectual Property Code, Article 58 paragraph 3 of the Croatian Patent Law, Article 26 paragraph 8 of Patents and Designs Act of Malta, Article 54 Moroccan Law 23-13, amending and supplementing Law 17-97 for the Protection of Industrial Property, Article 14 Serbian Patent Law, Article 51 Spanish Patent Law, Article 74 Turkish Decree-Law 551/1995 on Patent Protection.

⁴⁴ These rules are present in the legislation of Bulgaria, Croatia, France, Greece, Italy, Malta, Portugal, Romania, Spain and Turkey.

Acknowledging the serious impact of online commercial piracy, all the surveyed EUMED countries, with the exception of Algeria, have introduced legal provisions against the manufacture, assembly or import for the purpose of sale, or the use of any device, designed or built to circumvent technological protection measures, such as encryption, used by the author of an original work or the holder of related rights. Unlawful is also the voluntary removal of the above systems.

2.5 Definition of counterfeiting and of commercial piracy

Article 51, footnote 14, of the TRIPS Agreement, binding for EUMED countries which are members of the WTO, links the notion of counterfeiting to trademark infringement, while qualifying as piracy the illicit reproduction of a product without the consent of the copyright holder.⁴⁵ Violations of patent holders' exclusive rights are likewise prohibited.

Definition of counterfeiting and commercial piracy in WTO member States

As for countries which are not WTO members, it is worth noting that the notion of counterfeiting under Algerian law is broader than the definition adopted in the TRIPS Agreement. In addition to the violations of exclusive rights on trademarks, patents, geographical indications, it also includes copyright infringements. The above illicit behaviors are prosecuted with criminal⁴⁶ and civil remedies⁴⁷.

Definition in non-WTO member countries: Algeria

In Lebanon, though not expressly described as counterfeiting, the notion of trademark violation outlined in the Law on Trademarks has a great degree of similarity to Article 51, footnote 14 of the TRIPS Agreement.⁴⁸ Infringements are qualified as criminal offenses and subjected to fines and imprisonment.⁴⁹ Moreover, the legitimate trademark owner is protected through civil remedies.⁵⁰

Lebanon

⁴⁵ Pursuant to Article 51, note 14 TRIPS Agreement, the term "counterfeit trademark goods" shall mean *any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation*. Instead "pirated copyright goods" shall mean *any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation*.

⁴⁶ See Article 26 Algerian Ordinance 03-06 on Trademarks; Article 61 Ordinance 03-07 on Patents, Article 153 Copyright Law.

⁴⁷ See Articles 28 et seq. Ordinance 03-06 on Trademarks; Article 58 Ordinance 03-07 on Patents and Articles 141 et seq. Copyright Law.

⁴⁸ Articles 105 and 106 of the Lebanese trademark law define trademark infringement as the imitation and the use of a registered trademark on a product without the consent of the right holder, the sale of goods bearing a counterfeit trademark, the use of a sign similar to a registered trademark, and the sale of goods bearing an imitated registered trademark.

⁴⁹ See Articles 108 et seq. Lebanese Trademark Law.

⁵⁰ See Articles 119 and 127 of the Lebanese Trademark Law.

The current definition of counterfeiting in Lebanon includes patent infringement⁵¹, subjected to monetary fines and imprisonment.⁵² Right holders can also file a civil action for the award of damages.⁵³

The Serbian legal framework defines counterfeiting only in relation to trademark infringement (Article 5 of the Trademarks Ordinance). Compared to the TRIPS Agreement, Serbian law establishes that the use of a sign similar to a registered trademark is legal, insofar as it does not mislead the public. This implies that the mere association of a sign to an existing trademark does not constitute in itself an act of counterfeiting.⁵⁴

Serbia

2.6 Provisions for the fight against counterfeiting and commercial piracy

In EUMED countries which are WTO members, the violation of the exclusive rights of any trademark, geographical indication, industrial design, patent or copyright holders engages the civil liability of the infringer, in accordance with Article 42 of the TRIPS Agreement. The right holders may lodge a civil complaint, aimed at halting the infringement and claiming compensation. The plaintiff may also request the withdrawal from the market of the counterfeit or pirated products, as well as their destruction at the expenses of the infringer. With regard to domestic provisions, the following measures are of particular relevance.

Turkish law provides that the trademark holder may request the ownership of the seized goods, after a deduction of their value from the calculation of damages.⁵⁵

Both Spanish and Italian laws mandate that upon conviction for counterfeiting, the infringing goods be either destroyed or employed for social purposes, after the due procedures are implemented to ensure the enforcement of industrial property rights - such as the removal of counterfeit signs.⁵⁶ As for the award of damages, the Turkish legislation provides that in case of intentional violation, the trademark holder can request an additional compensation for the damage to his reputation caused by the illicit use of the trademark.⁵⁷

All EUMED countries which are members of the WTO enable intellectual property right holders to prevent an imminent violation of their rights, by requesting an injunction against the manufacture, sale, and use of a counterfeit product, along with the withdrawal from the market of infringing goods or the confiscation thereof.⁵⁸

Similarly, upon the right holder's request, in all WTO member countries the judicial authorities may order evidence preserving measures, both against ongoing or imminent violations of

⁵¹ See Article 40 Lebanese Patent Law.

⁵² See Article 41 Lebanese Patent Law.

⁵³ See Articles 46 and 50 Lebanese Patent Law.

⁵⁴ See Article 5, paragraphs 8 and 9, Serbian Trademark Law.

⁵⁵ See Article 62, paragraph d, Turkish Decree-Law 556/1995 on the Protection of Trademarks

⁵⁶ Respectively Article 41, paragraph D, Spanish Law 17/2001 on Trademarks and Article 124 letter (a), paragraph 3 of Italian Legislative Decree 30/2005.

⁵⁷ See Article 68, Turkish Decree-Law 556/1995 on the Protection of Trademarks.

⁵⁸ In accordance with Article 50, paragraph 1 (a) TRIPS.

intellectual property rights, if further delay would result in the destruction of evidence or if evidence cannot be collected at a later stage.⁵⁹ Moreover, EUMED countries which are part of the EU are bound by Directive 2004/48/ EC (the so called Enforcement Directive) on the enforcement of intellectual property rights, which requires Member States to make available to right holders injunctions to prevent or halt intellectual property infringements, as well as evidence preserving measures, before the analysis on the merits of the case.⁶⁰

Directive
2004/48/EC

Similar remedies are provided by the national laws of the surveyed countries which are neither part of the WTO nor members of the EU.

IPR protection
in non-WTO
member
countries

In the event of an imminent infringement, Serbian law enables the trademark owner to request the provisional seizure or the removal from circulation of counterfeit products and of the equipment used for their production. The right holder may also demand that any preparatory activity to a violation be halted.⁶¹

Similarly, the Court may order evidence preserving measures, even *inaudita altera parte*, if further delay would result in the destruction of evidence or if evidence cannot be collected at a later stage.⁶² Similar rules apply for the protection of patents and copyright, allowing the seizure or withdrawal from the market of infringing goods, as well as of the equipment used for the production thereof. The Court may also order the defendant to refrain from illicit conducts.⁶³ In Algeria, trade mark holders may request the seizure and destruction of counterfeit goods and of the machinery used for their production.⁶⁴ The same measures may be ordered by Algerian civil Courts for copyright protection. As for Lebanon, the National Patent Law clarifies that right holders may file a request to prevent the imminent infringement of a patent, for instance through the customs authorities.⁶⁵ The Court may also order the issuance of an inventory of infringing products and of available evidence.⁶⁶ In the event of trademark counterfeiting, the plaintiff may request to Lebanese civil Courts the identification and confiscation of counterfeit goods and of the equipment used in the production thereof.⁶⁷ Finally, Law 75/1999 on the protection of literary and artistic property in Lebanon allows the author to request precautionary measures to prevent breaches of its exclusive rights, in particular the confiscation of evidence.⁶⁸

⁵⁹ See Article 50, paragraph 1 (b) TRIPS Agreement.

⁶⁰ See Articles 7 and 9 Directive 2004/48, available at:
[http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32004L0048R\(01\)&from=EN](http://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32004L0048R(01)&from=EN)

⁶¹ See Article 75 Serbian Law on Trademarks.

⁶² See Article 76 Serbian Law on Trademarks.

⁶³ See Articles 134-136 Serbian Patent Law, Articles 210-211 Serbian law on Copyright and Related Rights.

⁶⁴ See Article 29 Ordinance 03-06 on Trademarks.

⁶⁵ See Article 50 Lebanese Patent Law. The plaintiff must file a civil complaint within 15 days from the issuance of the measures.

⁶⁶ See Article 51 Lebanese Trademark Law. Article 54 requires the plaintiff to start civil proceedings within 15 days from the issuance of the measures.

⁶⁷ See Article 123 of Resolution No. 2385 of 1924 on commercial and industrial property rights stipulates that operations can be carried out in shops, laboratories, industries, vehicles, warehouses, slaughterhouses, public markets, stations and ports.

⁶⁸ See Articles 81-83 Lebanese Law on the protection of literary and artistic property.

3. Provisions on quality schemes for foodstuffs and food safety

3.1 Quality schemes

Geographical indications are intellectual property rights establishing a connection between the quality, or the characteristics or reputation of a product and its geographical origin. The link between the geographical origin and the quality or characteristics or reputation of the good is the object of the legal protection, at national and international level.

Purpose for the protection of quality schemes

Since relevant legal provisions are extremely broad and fragmented, it is difficult to identify a generally applicable definition of geographical indication. In particular, uncertainties arise from the inconsistent use of different expressions, which makes it difficult to attribute a unique technical legal meaning.

In international law, appellations of origin and geographical indications are regulated by a plurality of agreements, both multilateral and bilateral. It has also been noted that while *"the protection of quality schemes is strongly enforced in their home countries, we are still far from a satisfactory protection at international level. This is probably due to the fact that, unlike other sectors of industrial law, in this field there is a strong conflict of interests between countries (Italy in particular) with a consolidated tradition in the production of quality food products, and those who do not have a similar heritage and therefore tend rather to favour their producers."*⁶⁹

From a legal standpoint, reference should be made to the Paris Convention for the Protection of Industrial Property, which specifically protects the "indications of source or appellations of origin", by requiring the Contracting States to take action against the use of false indications, which is misleading to the public.⁷⁰

Indications of Source and Appellations of Origin: the Paris Convention (1883)

The terms of protection were first specified in the *Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods* (1891), most recently amended by the Stockholm Act (1967).

Indications of Source: the Madrid Agreement (1891)

Article 1 of the Madrid Agreement clarifies that *all goods bearing a false or deceptive indication by which one of the countries to which this Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin shall be seized on importation into any of the said countries. (...) If the laws of a country do not permit seizure upon importation, such seizure shall be replaced by prohibition of importation.*

The fair use of appellations of origin is reiterated in the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958)⁷¹, recently amended by the

Appellations of Origin: the Lisbon Agreement (1958)

⁶⁹ See C. Galli, Globalizzazione dell'economia e tutela delle denominazioni di origine dei prodotti agro-alimentari, in Riv. dir. ind., II, 2004, p. 60; A. Vanzetti, Codice della proprietà industriale, Giuffrè (2013), p. 546

⁷⁰ See Articles 10 et seq. Paris Convention for the Protection of Industrial Property.

⁷¹ The text of the Agreement is available at: <http://www.wipo.int/wipolex/en/details.jsp?id=12586>

Geneva Act (2015), which calls it *"the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors."*⁷² These names are registered at WIPO International Office in Geneva upon the request of the competent authority of a Member State.⁷³

Compared to the Paris Convention, the Lisbon Agreement provides protection *against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind," "type," "make," "imitation", or the like*⁷⁴, regardless of the actual misleading effect to the public of the quality scheme.

The Lisbon Agreement does not provide criminal sanctions for infringement of appellations of origin or geographical indications, which are instead specified in domestic laws.

The TRIPS Agreement disciplines geographical indications in articles 22 et seq., broadly defined to encompass both appellations of origin and other indications of provenance, as was the case in earlier EU law.⁷⁵

Geographical
Indications:
the TRIPS
Agreement
(1995)

Article 22.1 of the TRIPS Agreement provides that geographical indications *"identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin"*. This definition differs in several respects from the discipline of the Lisbon Agreement, since there is no reference to "natural factors" and "human factors", although some scholars acknowledge those factors as necessary elements for the entitlement to the right.

Moreover, Article 22 does not require that the geographical environment is reflected in the objective characteristics of the product, as far as the reputation of the product is linked to the specific environment.⁷⁶

Unlike in the Lisbon Agreement, the protection of geographical indications ensured by the TRIPS Agreement is independent of the registration and prohibits the misleading use of any element indicating or suggesting that any product comes from a geographical area other than the true place of origin. Equally forbidden is any misleading commercial use of a geographical indication.⁷⁷

⁷² See Article 2 of the Lisbon Agreement for the Protection of Appellations of Origin and their international registration.

⁷³ The International Office administers the International Register of Appellations of Origin and formally notifies the other States in the event of new registrations. They are also published in the Official Journal of the Designations of Origin, established the Lisbon Agreement.

⁷⁴ See Article 3 Lisbon Agreement. Conversely, in the TRIPS Agreement the use of expressions such as "type" or "model" is only prohibited on indications for wines.

⁷⁵ The protection of geographical indications and designations of origin for agricultural products and foodstuffs was first disciplined in Regulation (EC) No. 2081/92.

⁷⁶ C. Galli, Globalizzazione dell'economia e tutela delle denominazioni di origine dei prodotti agro-alimentari, in Riv. dir. ind., II, 2004, p. 67.

⁷⁷ Such practices are listed in Article 10a of the Convention of the Paris Union for the Protection of Industrial Property, which prohibits the following:

1. *all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;*

The TRIPS agreement also deals with the relationship between geographical indications and trademarks, stating that Member States should refuse or cancel the registration of a trademark which contains or consists of a geographical indication with respect to products not originating from the indicated area, if the trademark is likely to mislead the public on the actual place of origin of the goods.⁷⁸

Finally, Article 23 of the TRIPS Agreement provides additional protection for geographical indications for wines and spirits, as it prohibits the use of a geographical indication to identify wines or spirits not originating from the specific area associated to the geographical indication, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.

Based on the obligations arising from WTO membership, the TRIPS Agreement has been implemented in EU countries through a *sui generis* legislation relating to appellations of origin and geographical indications for agricultural and food products; to appellations of origin and geographical indications for wines; as well as to geographical indications of spirit drinks and flavored wines. A regional protection system was thus instituted and is currently in force in EUMED countries that are members of the EU.⁷⁹

Relevant EU law

A common European approach was introduced after the *Cassis de Dijon* ruling of the EU Court of Justice, establishing that goods produced in accordance with the law of an EU country can be lawfully marketed in another Member State.⁸⁰ The current discipline of quality schemes for agricultural and food products in the EU⁸¹ is provided by Regulation (EU) No. 1151/2012, which regulates Protected Designations of Origin (PDO), Protected Geographical indications (PGI) and Traditional Specialities Guaranteed (TSG).⁸²

Article 5 of the Regulation clarifies that a Protected Designation of Origin (PDO) identifies a product originating in a specific place, region or, in exceptional cases, a country; whose quality or characteristics are essentially or exclusively due to a particular geographical environment

Protected Designations of Origin (PDO)

2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

3. indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

⁷⁸ Pursuant to Article 22 paragraph 4 TRIPS Agreement: the protection referred to in paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely indicates to the public that the products originate in another territory.

⁷⁹ Bulgaria, Croatia, France, Greece, Italy, Malta, Portugal, Romania, Slovenia and Spain.

⁸⁰ The text of the Judgment of the ECJ in the case *Cassis de Dijon* is available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61978CJ0120>

⁸¹ For the purpose of this study the general term “quality schemes” refers for the entire EUMED area both to the notion of geographical indications, as defined by the TRIPS Agreement, and to the appellations of origin, as defined in the Lisbon Agreement. In EU law, instead, the term “quality schemes” designates quality schemes for food products, divided in Geographical Indications, Appellations of Origin and Traditional Specialties Guaranteed, according to Regulation (EU) No. 1151/2012.

⁸² The text of the Regulation is available at:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:343:0001:0029:it:PDF>

with its inherent natural and human factors; and the production steps of which all take place in the defined geographical area.

Protected geographical indications (PGI) identify a product originating in a specific place, region or country; whose given quality, reputation or other characteristic is essentially attributable to its geographical origin; and at least one of the production steps of which take place in the defined geographical area.⁸³ Consequently, access to the Protected Geographical Indications seems possible for goods resulting from the processing of raw materials originating outside the defined geographical area, provided that the production area of the raw materials is defined; special conditions for the production of the raw materials exist and there are control arrangements to ensure that the above conditions are respected.

Protected
Geographical
Indications (PGI)

The introduction of Traditional Specialities Guaranteed is aimed at preserving traditional recipes and methods of production, helping producers to communicate the added value of their recipes and their products on the market. A name can be protected as Traditional Speciality Guaranteed if it designates a specific product or foodstuff which results from a mode of production, processing or composition corresponding to traditional practice for that product or foodstuff; or it is produced from raw materials or ingredients that are those traditionally used.⁸⁴ In addition, the name must have been traditionally used to refer to the specific product, or designate the traditional character or the specificity of the product. However, it is worth noting that the STG are not considered to be intellectual property rights.

Traditional
Specialities
Guaranteed (STG)

To obtain the registration of a protected designation of origin or a protected geographical indication the product (be it food, wine, or spirits) must be compliant with the requirements set forth in the product specification, including a description of the raw materials, the main physical, chemical, microbiological or organoleptic characteristics; the definition of the specific geographical area, the method of production and the factors which demonstrate that the product originates in that area, the description of the use of local and constant production methods, as well as with labeling requirements.⁸⁵

Conditions for
protection

Article 13 of Regulation (EU) No. 1151/2012 provides that registered names are legally protected from any unauthorized direct or indirect commercial use in respect of comparable goods or ingredients not covered by the registration or if the intended use of a quality scheme would unduly exploit the reputation of the protected name.

Relevant legal
discipline

⁸³ See Article 5, paragraph 2 of Regulation (EU) n. 1151/2012.

⁸⁴ See Article 18, paragraph 1 of Regulation (EU) No. 1151/2012.

⁸⁵ See Article 7 of Regulation (EU) No. 1151/2012.

It is worth noting that names and details of registered products - which are more than 3 300 - under the different schemes are listed in the following databases:

- DOOR (Database of Origin & Registration) includes product names for foodstuffs registered as Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Specialities Guaranteed (TSG), as well as names for which registration has been applied.

- E-BACCHUS is the database on geographical indications protected in the European Union for wines originating in Member States and third countries.

- E-SPIRIT DRINKS is a database on geographical indications protected in the European Union for spirit drinks originating in Member States and third countries as well as new applications for protection.

Equally prohibited is any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’ or similar, including when those products are used as an ingredient.

In general, false or misleading indication as to the provenance, origin, nature or essential qualities of the product on the packaging, advertising material or documents relating to the concerned product are prohibited, along with the use of packaging liable to convey a false impression as to its origin. The ban is extended to any other practice which is likely to mislead consumers as to the true origin of the product.⁸⁶

The same principles are indicated in Article 103 of Regulation (EU) No. 1308/2013, Article 16 of Regulation (EC) No. 110/2008 and Article 20 of Regulation (EU) No. 251/2014.

Regulation (EU) No. 1151/2012 does not deal with penalties for infringements of quality schemes, which are addressed by domestic Courts and punished in accordance with national laws.

EUMED countries that are not EU members but are part of the WTO - namely Egypt, United Arab Emirates, Jordan, Morocco, Tunisia and Turkey - are bound by Articles 22 to 23 of the TRIPS Agreement.

The protection of quality schemes in non-EU member countries

Algeria - which is not a signatory party to the TRIPS Agreement - and Tunisia have ratified the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Turkey, despite being a signatory to this Agreement, has not yet ratified it.⁸⁷

With the exception of the United Arab Emirates, all the above countries have introduced national systems for the protection of quality schemes. The protection is either based on administrative proceedings, bringing together representatives of producers and the public administration, or on domestic rules for the protection of collective and certification marks.

Registered geographical indications are legally protected in all the surveyed EUMED countries against any direct or indirect commercial use in respect of comparable products, or if the use of the name would unduly exploit the reputation of the protected name.⁸⁸

Legal remedies against infringements

Equally forbidden is any reference to a geographical place which conveys a false impression as to the origin of the product, or the use of a registered name in translation or accompanied by expressions such as “style,” “type,” “method,” “as produced in” or other similar qualifying terms.

⁸⁶ See Article 13 Regulation (EU) No. 1151/2012.

⁸⁷ The list of States Parties to the Lisbon Agreement is available at: http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10

⁸⁸ See Article 15 (a) of the Turkish Decree-Law 555/1995; Article 16 Tunisian Law 99-57 on registered appellations of origin and indications of source of agricultural products; Article 3 of Law 8/2000 on Geographical Indications of Jordan; Article 182 (b) Law 23-13 of Morocco, amending and supplementing Law 17-97 on the Protection of Industrial Property; Article 105 of Law No. 82/2002 on the protection of intellectual property rights in Egypt.

The prohibition is extended to any use of false or misleading information as to the origin, nature or essential qualities of the product on its packaging, or in advertising material or documents relating to the product.⁸⁹

Algeria, Jordan, Morocco, Tunisia and Turkey allow the legitimate user of a registered quality scheme to file a civil complaint against breaches of his/her exclusive right.⁹⁰

In Turkey and Jordan, the legitimate right holder may also apply for the seizure of counterfeit goods, as well as the equipment and machinery used in the production thereof, also on a precautionary basis to halt the infringement.

As a last resort, the Court may order the destruction of counterfeit goods, if it is deemed essential to prevent further violations,⁹¹ and the publication of the judgment at the expenses of the offender.

Before the issuance of the judgment, in Egypt, Jordan, Morocco and Turkey, the legitimate user of a geographical indication can address a civil Court to prevent an imminent violation of his/her rights through an injunction against infringement.⁹²

With regard to evidence preserving measures, Egypt, Jordan, Tunisia and Turkey enable the legitimate user of a registered geographical indication to request the seizure of infringing products.⁹³

In spite of the obligations stemming from WTO membership, the United Arab Emirates have not yet approved specific provisions for the protection of geographical indications for agricultural products. However, amendments to Federal Law 37/1992 on trademarks have introduced measures prohibiting the registration of misleading geographical references. In particular, subparagraphs 3 and 9 of Article 3 prohibit the adoption of geographic references as trademarks or parts thereof, should the registration be misleading as to the true origin of the goods, products or services. The same prohibition applies to trademarks which may mislead the public or include misstatements on the origin or source of products or services or their other properties, as well as of trademarks which include a fictitious, imitated or forged trade name.

EUMED countries which are neither member of the EU nor of the WTO, namely Algeria, Lebanon and Serbia have introduced specific national rules for the protection of quality schemes.

The legal void
in the UAE

Legal regime in
EUMED countries
which are not
WTO members

⁸⁹ See Article 15 (b) and (c) Turkish Decree-Law 555/1995; Article 16 Tunisian Law 99-57 on registered appellations of origin and indications of source of agricultural products; Article 3 paragraphs 3 and 4 of Law 8/2000 on Geographical Indications of Jordan; Article 30 (c) Law 25-06 of Morocco, concerning distinctive quality schemes and source for agro-food and seafood products; Article 106 and 107 Law 82/2002 on the protection of intellectual property rights in Egypt.

⁹⁰ See Article 112 Law 82/2002 on the protection of property rights intellectual in Egypt; Article 8 Law 8/2000 on Geographical Indications of Jordan; Articles 201-202 of Moroccan law 23-13, which amends and supplements Law 17-97 on the Protection of Industrial Property; Article 21 Tunisian law 99-57 on registered appellations of origin and indications of source of agricultural products; Article 25 of the Turkish Decree-Law 555/1995.

⁹¹ See Article 55 of Turkish Decree-Law 555/1995 and Article 8 (e), Law 8/2000 on Geographical Indications of Jordan.

⁹² See Article 115 Law 82/2002 on the protection of intellectual property rights in Egypt; Article 8 Law 8/2000 on Geographical Indications of Jordan; Articles 203 of the Moroccan law 23-13, amending and supplementing Law 17-97 on the Protection of Industrial Property; Article 30 Turkish Decree-Law 555/1995 on the Protection of Geographical Indications.

⁹³ See Article 112 Law 82/2002 on the protection of intellectual property rights in Egypt; Article Law 8/2000 on Geographical Indications of Jordan; Article 30 Tunisian Law 99-57 on registered appellations of origin and indications of source of agricultural products; Article 35 Turkish Decree-Law 555/1995 on the Protection of Geographical Indications.

In compliance with the obligations of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, Ordinance No. 76-65 of 16 July 1976 has introduced the notion of appellation of origin in Algeria, defining it as the geographical name of a country, region or part thereof, as well as a location within a region, which designates goods herein produced, whose qualities or characteristics are essentially or exclusively linked to the geographic environment, including human and natural factors.

Algeria

Article 21 of the Ordinance No. 76-65 prohibits any unauthorized use of a registered appellation of origin, even if the actual origin of the product is specified, or if the geographical indication is used in conjunction with terms such as "kind", "how", "imitation" or the like. Regarding enforcement, the legitimate user of an appellation of origin can address the civil Court to request precautionary measures aimed at preventing an imminent infringement or at halting an ongoing infringement.⁹⁴

The Lebanese legal system does not currently protect geographical indications for food products. To address this shortcoming, in 2004 the Government participated in a technical assistance program with the Swiss Confederation, in the framework of the European Free Trade Association (EFTA).⁹⁵ The project aims to: a) establish an effective protection of geographical indications in Lebanon, b) identify products from a certain territory or region, c) to assist producers' associations in drafting applications for registration of geographical indications at the Ministry of Economy and Trade (MOET), and d) cooperate with business operators on legal and technical matters related to geographical indications. It resulted in the drafting of a bill for the protection of quality schemes in Lebanon, which is currently under parliamentary approval. The text regulates geographical indications, designations of origin and traditional terms.

Lebanon

Geographical indications in Serbia are regulated by the Law on Geographical Indications of Origin, which distinguishes between appellations of origin and geographical indications. They can be related to natural, agro-food and industrial products, as well as to traditional services.

Serbia:
analogies with
EU law

As stated in Article 71 of the Law on Geographical Indications of Origin, right holders can seek redress for infringements through a civil action aimed at declaring and halting the violation. The plaintiff may also request the destruction of infringing goods, as well as the removal of machinery used to commit the offense. Upon conviction, the Court awards compensation of damages and may also order the publication of the judgment at the expenses of the defendant. In order to prevent a substantial harm or an imminent danger, the Court may also order precautionary measures, such as seizure of infringing products and of the equipment used in the production thereof.⁹⁶

⁹⁴ See Article 29 Algerian Ordinance 76-65 on Appellations of Origin.

⁹⁵ Further information is available at: <http://www.economy.gov.lb/index.php/project/2/13>

⁹⁶ See Articles 75-76 Serbian Law on Geographical Indications of Origin.

Focus on the protection of quality schemes for wines and spirits

Article 23 of the TRIPS Agreement provides specific protection of geographical indications for wines and spirits, which exceeds the standard discipline laid down in Article 22. Contrary to what is stipulated in the latter in relation to food products other than wines and spirits, Article 23 prevents the use of a geographical indication to identify wines or spirits not originating from the area associated to the geographical indication, even where the true origin of the goods is indicated or the geographical indication is translated or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like; and irrespective of any risk of confusion or unfair competition, contrary to what is stipulated in Article 22 in relation to food products other than wines and spirits.

The reinforced protection provided by the TRIPS Agreement

The registration of quality schemes in breach of the above requirements shall be refused or invalidated, *ex officio* or upon request of the legitimate user. In order to facilitate the protection of geographical indications for wines and spirits, the TRIPS Agreement provided the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.⁹⁷ However, the negotiations on the issue have stalled and the mechanism has never been activated.

Proposal of a multilateral notification and registration system

Therefore, in WTO member countries the enforcement of quality schemes for wines and spirits is ensured through national Courts.⁹⁸

Article 24 introduces a number of exceptions to allow continued and similar use of a particular geographical indication identifying wines or spirits used in the territory of Member States either (a) for at least 10 years before 15 April 1994 or (b) in good faith preceding that date. In the same perspective, the Agreement permits the use of geographical indications with respect to goods or services for which the relevant indication is identical to the customary term in common language in the territory of Member States. Moreover, the use of relevant indications which are identical to the customary name of a grape variety existing in the territory of a Member State as of the date of entry into force of the WTO Agreement is admitted.

The protection of pre-existing indications

With reference to the relationship with trademarks, whereas for food products in general Article 22 bars the registration of a trademark which contains or consists of a geographical indication designating goods which do not originate in the territory only if its use would mislead the public as to the place of origin; for wines and spirits Article 23 TRIPS prohibits the registration of a trademark for wines which contains or consists of a geographical indication identifying wines whose origin does not correspond to the geographical indication. In other words, the protection of wines and spirits against the use of marks containing or consisting of

Relation with trademarks

⁹⁷ See Article 23, paragraph 4 TRIPS Agreement.

⁹⁸ E.M. Appliano, Le pratiche enologiche e la tutela delle indicazioni di qualità nell'accordo EU/USA sul commercio del vino ed in altri trattati della Comunità, in B. Ubertazzi, E. Muniz Espada, Le indicazioni di qualità degli alimenti: diritto internazionale ed europeo, Giuffrè (2009), p. 375.

geographical indications which do not correspond to the place of origin of the product, does not require a verification of the deceptive character of the mark - as for other food products - but it is recognized based on the mere absence of a link with the mentioned territory.

The EU regulates the wine sector through Regulation (EC) No. 479/2008 of 29 April 2008 on the common organisation of the market in wine, and Regulation (EU) No. 1308/2013 of the European Parliament and of the Council on the common organization of the markets in agricultural products.⁹⁹

The discipline of
the wine sector
in EU law

Article 24 of Regulation (EC) No. 479/2008 authorizes the Member States to determine the varieties of grapes authorized in their territory for the production of wine, which must belong to the species *Vitis vinifera* or come from a cross between this species and other species of the *Vitis* genus. It is worth noting that designations for a category of wine products (wine, sparkling wine, wine vinegar, etc.) are defined in Annex IV to Regulation (EC) No. 479/2008 and can not be used for products not meeting the conditions specified therein.

In accordance with Title III, Chapter IV of Regulation (EC) No. 479/2008, from August 1, 2009, new rules came into force on quality schemes in order to protect the interests of consumers and wine producers and to promote the production of quality wine products.

Quality schemes
for the wine
sector in EU law

These rules are specified in Regulation (EC) No. 479/2008 and Regulation (EC) No. 607/2009 *laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labeling and presentation of certain wine sector products*. Article 34 letter (a) Regulation (EC) No. 479/2008 clarifies that a protected designation of origin (PDO) refers to the name of a region, a specific place or, in exceptional cases, a country used to describe a product whose quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors. The article further specifies that, in order to be eligible for PDO protection, the grapes from which the wine is produced must come exclusively from the relevant geographical area and its production must take place in the latter. According to Article 34 letter (b), the protected geographical indication (PGI) indicates a wine product that possesses a specific quality, reputation or other characteristics attributable to that geographical origin. Every product that benefits from a PGI must be obtained from grapes of which at least 85% originate from the specific geographical area and whose production takes place in the latter.

In accordance with Article 2 Regulation (EC) No. 607/2009, a farmer may apply for a PDO or PGI if it is the only producer in the defined geographical area and if the relevant area possesses features which are substantially different from those of the surrounding demarcated areas or if

⁹⁹ The text of Regulation (EC) No. 479/2008 is available at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:148:0001:0061:IT:PDF>
The text of Regulation (EU) No. 1308/2013 is available at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:it:PDF>

the characteristics of the product differ from those of the products obtained in the surrounding demarcated areas. Applications for protection of names as designations of origin or geographical indications include a technical file and a single document summarizing the product specification, as clarified in Articles 35-36 Regulation (EC) No. 479/2008.

According to Article 103 Regulation (EU) No. 1308/2013, establishing a common organization of the markets in agricultural products, the designations of origin and protected geographical indications may be used by any operator marketing wine produced in compliance with the corresponding product specification.

The protection of Designations of Origin and Geographical Indications for wines in EU law

The wine using a protected geographical indication in conformity with the product specifications is protected against any direct or indirect commercial use by comparable products, which do not comply with product specification, in so far as such use would exploit the reputation of the quality scheme; as well as against any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated or transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar expressions.

Article 103 then prohibits any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the wine product concerned, as well as the packing of the product in a container liable to convey a false impression as to its origin; and any other practice liable to mislead the consumer on the true origin of the product.

The Commission may, on its own initiative or on a duly substantiated request by a Member State, a third country or a natural or legal person having a legitimate interest, adopt implementing acts to cancel the protection of a designation of origin or a geographical indication if compliance with the corresponding product specification is no longer ensured.

As regards the relationship between quality schemes and trademarks for wine products, the application for registration of a trademark which contains or consists of a designation of origin or a protected geographical indication not compliant with the product specification must be rejected¹⁰⁰, if the application for trademark registration is presented after the approval of the request for protection of the designation of origin or geographical indication protection to the Commission, or must be canceled if it has already been granted.

The relation with trademarks

Within the EU, alcoholic drinks are disciplined by Regulation (EC) No. 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labeling and the protection of geographical indications of spirit drinks.¹⁰¹

The discipline of spirits drinks in EU law

¹⁰⁰ Or the use of which falls under Article 103(2), and that relates to a product falling under one of the categories listed in Part II of Annex VII.

¹⁰¹ The text of Regulation (EC) No. 110/2008 is available at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:039:0016:0054:EN:PDF>

Under Article 2 of Regulation (EC) No. 110/2008, spirits are alcoholic drinks intended for human consumption, having particular organoleptic characteristics and a minimum alcoholic strength of 15 % vol. They are produced by distillation of naturally fermented products, and/or by maceration of plant materials in ethyl alcohol, by the addition of flavourings, sugars or other sweetening products to ethyl alcohol, to distillates or to spirits drinks. They may also be produced through the mixing of a spirit drink with other spirits, ethyl alcohol of agricultural origin or certain distillates.

Annex II of the Regulation defines 46 categories of spirits, each with different specifications which are necessary for a spirit drink to be included in a particular category.

Article 15 Regulation (EC) No. 110/2008 specifies that the geographical indication identifies a spirit drink as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to its geographical origin. Article 10 Regulation (EC) No. 110/2008 clarifies that geographical indications for spirit drinks which are registered in Annex III may not become generic.

The protection of quality schemes for spirits drinks in EU law

Pursuant to Article 10 of Regulation (EC) No. 110/2008, the use of a term listed in categories 1 to 46 of Annex II, or of a geographical indication registered in Annex III in a compound term or the allusion in the presentation of a foodstuff to any of them, shall be prohibited unless the alcohol originates exclusively from the spirit drink referred to. By virtue of Article 16 Regulation (EC) No. 110/2008, the geographical indications registered in Annex III are protected from any direct or indirect commercial use in respect of comparable products not covered by the registration, insofar as such use would exploit the reputation of the registered geographical indication; the prohibition is extended to any misuse, imitation or evocation, even if the true origin of the product is indicated or the geographical indication is used in translation or accompanied by an expression such as 'like', 'type', 'style', 'made', 'flavour' or any other similar term.

Registered geographical indications are also protected against any other false or misleading indication as to the provenance, origin, nature or essential qualities on the description, presentation or labeling of the product, liable to convey a false impression as to its origin; any other practice liable to mislead the consumer as to the true origin of the product.

According to Article 17 of Regulation (EC) No. 110/2008, the registration of a geographical indication by EU countries and third countries takes place after submission of the application to the European Commission. The application should be supplemented by a technical file detailing specifications, such as the description of the spirit drink, the definition of the geographical area concerned; a description of the production method, any requirements laid down by Community and/or national and/or regional provisions, the name and address of the applicant. However, Article 18 reiterates that if compliance with the specifications in the technical file is

The registration of Geographical Indications for spirits drinks

no longer ensured, the Commission can take a decision cancelling the registration. The registration of a trademark which contains or consists of a geographical indication registered in Annex III is refused or invalidated if its use would infringe the exclusive rights of the legitimate trademark holder. Finally, a geographical indication shall not be registered where, in the light of the reputation and recognition of the trademark and of the duration of its use in the EU, the registration is liable to mislead consumers as to the true identity of the product.

The relation with
trademarks

3.2 Provisions on food safety and rules on food origin

EUMED countries which are also members of the EU share a set of common principles in relation to the agro-food sector, which is one of the most extensively regulated areas under European law. Since the '90s, the European Commission has developed a comprehensive approach - "from farm to fork" - that covers all stages of the distribution chain, from feed production, primary production, food processing, storage, transport, to the retail. As stated in the White Paper on Food Safety, the Commission aims to harmonize national legislation, strengthen inspections and improve the performance of scientific consultancy.¹⁰²

The EU discipline: safety from farm to fork

Against this background, rules to ensure food safety and the protection of consumer health have been adopted.

The European regulatory framework disciplines obligations of food business operators and the prerogatives of public institutions (both on a national and European level) in charge of law enforcement and accident response. The first must abide by rules on food standards, production processes and food presentation. On the other hand, the duties of public bodies are focused on enforcement and prosecution of infringements.

In EUMED countries which are not members of the EU, regulation of the agro-food sector is entrusted to domestic law. In broad terms, food safety and official controls are disciplined in specific laws and in consumer protection rules. Algeria, Egypt, Jordan, Morocco, Serbia, Tunisia and Turkey have already introduced specific rules on food safety, hygiene requirements and responsibilities of business operators. Comprehensive legal reforms are underway in Lebanon - where a Bill on Food Safety and the introduction of the Lebanese Commission for Food Safety (FSLC)¹⁰³ are being discussed - and in the United Arab Emirates, where the Federal National Council in March 2014 approved a new law to harmonize food safety rules, currently awaiting presidential approval.

Food safety in non-EU member countries

Mirroring the European approach, and in order to ensure consumer safety, also in these countries the legal framework aims at preventing the placement on the market of food products which are unsafe, hazardous to health or unfit for human consumption.¹⁰⁴

¹⁰² The full text of the White Paper on Food Safety is available at:

http://ec.europa.eu/dgs/health_consumer/library/pub/pub06_en.pdf

¹⁰³ Food safety in Lebanon is currently regulated by the following decrees:

- Decree 12/253-1969, which imposes requirements for canned foods or long conservation and describes the role of public authorities in the field of security food;

- Decree 71-1983, as amended by Law No. 63188-1988 Safety of all types of food;

- Decree 1836-1999 governing the mandatory information for some categories of food;

- Decree 7177-2002, which called Lebanese standards for certain categories of foods.

¹⁰⁴ See Articles 4-8 Law 09-03 on consumer protection in Algeria; Article 2 of Law 10/1966 on food control and regulation of trade in Egypt; Article 4 Law 28-07/2010 on food safety in Morocco, Article 25 Serbian Law on Food Safety, Official Gazette R.S. 41/09; Article 3 of Law 117/1992 in Tunisia; Article 21 of Law 5996/2010 on veterinary services, plant health, food and feed.

The main principles on food safety for EU member states are contained in Regulation (EC) No. 178/2002 *laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety*.

Regulation (EC)
No. 178/2002

First, with a view to ensuring uniform rules at EU level, Article 14 provides a clear definition of food injurious to health and unfit for human consumption.

In particular, to determine whether food is unsafe, the following should be considered: a) the normal conditions of use of the food by the consumer at each stage of production, processing and distribution; b) the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health. Foodstuffs is considered injurious to health with reference to: a) probable immediate and/or short-term and/or long-term effects of that food on the health of a person consuming it, also on subsequent generations; b) the probable cumulative toxic effects; c) the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers. Finally, to determine if food is safe for human consumption, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.

Notion of
unsafe
foodstuffs

Notion of
foodstuffs
injurious to
health

Notion of
foodstuffs safe
for human
consumption

Regulation (EC) No. 178/2002 is based on three main principles: risk analysis, precaution and transparency. The notion of risk analysis refers - among other things - to mechanisms regulating technical and scientific assessments of the European Agency for Food Safety Authority (EFSA).

Main principles
of EU
discipline: 1)
risk analysis

The precautionary principle relates to specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists.¹⁰⁵ In such circumstances, provisional risk management measures necessary to ensure a high level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment. Finally, the principle of transparency concerns the public interest in food safety and is based on public consultations during the preparation, evaluation and revision of food law, in addition to the reporting obligations of the authorities when there are reasonable grounds to suspect that a food or feed may present a risk to human or animal health.

2) Precaution

3) Transparency

Regulation (EC) No. 178/2002 also provides basic criteria to ensure the safety of food and feed, i.e. traceability and the responsibility of food business operators. The provision of traceability at all stages of production, processing and distribution of food, feed and ingredients, facilitates the withdrawal from the market of products in case of safety concerns and allows providing consumers with specific and reliable information. In this respect, companies must be able to identify at least the direct supplier and the subsequent purchaser of their goods.

Traceability

¹⁰⁵ See Article 7 Regulation (EC) No. 178/2002.

If food business operators consider or have reason to believe that a food which they have imported, produced, processed, manufactured or distributed is not in compliance with the food safety requirements, they must immediately initiate procedures to withdraw the product from the market, where the food has left the immediate control of that initial food business operator, and inform the competent authorities of the measures adopted to mitigate the risk.¹⁰⁶ Such provisions will be examined extensively in the next section.

Duties of food business operators

The above principles are also present in national laws of EUMED countries which are not part of the EU. A first common element is the professional duty of food business operators to ensure that all stages of production, processing and distribution of food which fall under their control comply with food safety requirements.

Common principles in non-EU countries: duties of food business operators

In case of non-compliance with safety requirements, Morocco, Serbia, Turkey and United Arab Emirates require food business operators to inform the competent public authorities and consumers, and to immediately withdraw from the market food products which they imported, produced, manufactured or distributed, which are no longer under their immediate control.¹⁰⁷

Compared to legislation in force in the EU, some differences emerge in EUMED countries, regarding the principles of precaution and transparency, as well as in the implementation of traceability schemes.

In particular, Algeria, Morocco, Serbia and Turkey follow the precautionary principle in case possible harmful effects on health caused by food products are suspected. Despite the lack of conclusive data, provisional measures may be applied pending a definitive risk technical analysis.¹⁰⁸ In a comparative perspective, it is worth noting that Serbia, as the EU member countries, requires such measures to be proportionate and not more trade-restrictive than necessary to achieve a high level of health protection, while taking into account the technical and economic viability thereof.¹⁰⁹ In line with the provisions of Regulation (EC) No. 178/2002, the Serbian law provides for a review of these measures within a reasonable period, depending on the nature of the risk to life or health and the type of scientific information needed for a more comprehensive assessment.

Principle of precaution

Serbian and Turkish food laws are also based on the principle of transparency. Therefore, if there are reasonable grounds to suspect that a food or feed may present a risk to human or animal health, public authorities must take the appropriate steps to inform the public of the

Principle of transparency

¹⁰⁶ See Article 19 Regulation (EC) No. 178/2002.

¹⁰⁷ See Article 10 Law 28-07/2010 on food safety in Morocco; Article 33 Law on food safety in Serbia, Official Gazette of R. S. 41/09; Article 22 of Law 5996/2010 on veterinary services, plant health, food and feed; Article 6 of Emirate Abu Dhabi Law 2/2008.

¹⁰⁸ See Article 29, Law 09-03 on consumer protection in Algeria; Article 6 Law 28-07/2010 on food safety in Morocco; Article 7 of the Law on food safety in Serbia, Official Gazette of R. S. 41/09; Article 26 paragraph 5 of Law 5996/2010 on veterinary services, plant health, food and feed.

¹⁰⁹ See Article 7 Law on food safety in Serbia, Official Gazette R.S. 41/09.

nature of the risk, identifying to the fullest extent possible the food or feed concerned and the measures adopted to prevent, reduce or eliminate the threat.¹¹⁰

According to the Serbian law the principle of transparency also includes the obligation to carry out collective public consultations during the preparation, evaluation and revision of food laws - except in cases of emergency.¹¹¹

Among EUMED countries which are not part of the EU, Morocco, Serbia, Turkey and the United Arab Emirates have introduced an obligation to adopt traceability schemes, to ensure the integrity of each substance to be incorporated into food or feed at any stage of the supply chain.¹¹²

Traceability

Food business operators are thus required to identify their suppliers and must establish procedures to communicate relevant information to the competent public authorities.

Conversely, Algeria, Egypt, Lebanon and Tunisia have not imposed legal obligations on the traceability of food products. From an operational standpoint, since 2004 Egypt has participated in a pilot project, implemented by the United Nations Industrial Development Organization (UNIDO) and funded by the Italian Development Cooperation.¹¹³ The initiative is aimed at reducing trade barriers faced by Egyptian exporters after the entry into force of Regulation (EC) No. 178/2002 on food safety, arising from the lack of adequate quality and traceability control systems. To this end, UNIDO established the Egyptian Traceability Centre for Agro-Industrial Exports (ETRACE), which has brought a substantial contribution to the development of the national agricultural sector.

In EUMED countries which are part of the EU, Regulation (EC) No. 882/2004 disciplines official controls carried out by Member States to verify compliance with the legislation on food and feed.

Food safety
controls in the
EU: Regulation
(EC) No.
882/2004

As specified in the following section, the main provisions of the Regulation include: conditions for the intervention of administrative authorities, law enforcement and controls on imported products, as well as the on the frequency of inspections based on risk analysis.¹¹⁴ Official controls may be carried out at any stage of the supply chain and cover products intended for the common market, as well as imported and exported goods.¹¹⁵

The primary responsibility for the implementation of the rules is entrusted to the national authorities, which manage official controls to verify compliance with the standards by food business operators in the EU.

¹¹⁰ See Article 26 paragraph 2 of Law 5996/2010 on veterinary services, plant health, food and feed; Article 9 Law on food safety in Serbia, Official Gazette R. S. 41/09.

¹¹¹ See Article 10 Law on food safety in Serbia, Official Gazette R. S. 41/09.

¹¹² See Article 12 Law 28-07/2010 on food safety in Morocco; Article 32 of Serbian Food Safety Law, Official Gazette of R.S. 41/09; Article 24 Law 5996/2010 on veterinary services, plant health, food and feed; Article 6 of the Emirate Abu Dhabi Law 2/2008.

¹¹³ Further information is available at: <http://www.oecd.org/aidfortrade/47748299.pdf>

¹¹⁴ Article 1 Regulation (EC) No. 882/2004.

¹¹⁵ See Article 3, paragraphs 1 and 3, Article 4 of Regulation (EC) No. 882/2004.

In order to ensure a uniform discipline within the single market, the EU has also developed a harmonized legislation on food labeling, contact materials, additives, pesticides and other contaminants.

The European rules on food labeling are contained in Regulation (EU) No. 1169/2011, which came into force on 13 December 2014, laying down provisions on the presentation and advertising of food marketed in the EU.¹¹⁶

Food labeling
in the EU:
Regulation
(EU) No.
1169/2011

The most important obligation consists in providing a list of mandatory information to be illustrated with a predetermined minimum font size.¹¹⁷

Special emphasis is also put on a clear and harmonized presentation of allergens in the ingredient list, including food products provided to bars and restaurants. The same labeling requirements are in place for food sales online and in shops.¹¹⁸

Materials intended for contact with food are regulated by Regulation (EC) No. 1935/2004, which stipulates the main requirements for food packaging and licensing procedures of the substances through the EFSA.¹¹⁹

Food contact
materials in the
EU: Regulation
(EC) No.
1935/2004

The Regulation aims to ensure uniform standards of protection against the risk of "migration", i.e. the transfer of some components of the packaging to the food in an excessive amount.¹²⁰

Annex I to Regulation (EC) No. 1935/2004 contains specific measures for different substances. Specific directives are currently in force concerning plastics,¹²¹ recycled plastics,¹²² regenerated cellulose film¹²³ and ceramics.¹²⁴ A distinct "for food" mark must also be included on the food contact material.

As regards additives, the EU has developed a "Food Improvement Agents Package", which includes Regulation (EC) No. 1331/2008 for a common authorization procedure for food additives, food enzymes and food flavorings; along with subject-specific implementing rules, Regulation (EC) No. 1332/2008 on food enzymes, Regulation (EC) No. 1333/2008 on food additives and Regulation (EC) No. 1334/2008 on flavorings.¹²⁵ The use of additives in EU countries is admissible upon inclusion of the product in an Annex to Regulation (EC) No.

Food additives in
the EU:
Regulation (EC)
No. 1331/2008

¹¹⁶ See Regulation (EU) No. 1169/2011 on the provision of food information to consumers combines the provisions of Directive 90/496/EEC and Directive 2000/13/EC. The full text is available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:it:PDF>

¹¹⁷ See Articles 9, 12 and 13 Regulation (EU) No. 1169/2011.

¹¹⁸ See Article 14 Regulation (EU) No. 1169/2011.

¹¹⁹ The full text of the Regulation is available at:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:338:0004:0017:en:PDF>

¹²⁰ According to good manufacturing practices and to article 12 Regulation (EU) n. 10/2011, plastic materials and articles shall not transfer their constituents to food simulants in quantities exceeding 10 milligrams of total constituents released per dm² of food contact surface (mg/dm²). Specific Migration Limit (SML) has been developed for specific substances, defined on the basis of toxicological analysis.

¹²¹ The full text of the Regulation is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:012:0001:0089:EN:PDF>

¹²² The full text of the Regulation is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.douri=OJ:L:2008:086:0009:0018:EN:PDF>

¹²³ Directive 2007/42 / EC is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do uri=OJ:L:2007:172:0071:0082:EN:PDF>

¹²⁴ The full text of Directive 84/500/EC is available at:

http://ec.europa.eu/food/food/chemicalsafety/foodcontact/leg_files/84_500_en.pdf

¹²⁵ Further information is available at: http://ec.europa.eu/food/food/FAEF/index_en.htm

1333/2008, provided that: a) it does not, on the basis of the scientific evidence available, pose a safety concern to the health of the consumer at the proposed level of use; (b) there is a reasonable technological need that cannot be achieved by other economically and technologically practicable means; and (c) its use does not mislead the consumer. Regulation (EC) No. 1333/2008 lays down precise rules on food additives, defining classification, labeling, procedures and conditions of use.¹²⁶

Pesticides and other contaminants are disciplined in Regulation (EC) No. 1107/2009 laying down rules for the authorization of plant protection products (PPPs), including a list of active substances whose use is authorized in the EU.¹²⁷

Plant protection products in the EU: Regulation (EC) No. 1107/2009

A pesticide is intended to protect plants or plant products against all harmful organisms, or to protect plant products during production, storage and transport. EU countries authorize the domestic use of pesticides, with the approval of the Commission and in compliance with relevant European standards.

In particular, Regulation (EC) No. 396/2005 has harmonized the maximum residue levels (MRLs) of pesticides in food and feed of plant and animal origin, with effect from September 2008.¹²⁸

Notion of maximum residue levels (MRLs)

Article 3 (2) (d) of the Regulation defines maximum residue levels (MRLs) as the maximum residue in or on food or feed set in accordance with the Regulation, based on good agricultural practice and the lowest consumer exposure necessary to protect vulnerable consumers.

EU law harmonizes the MRLs of pesticides and imposes a uniform evaluation scheme, which applies to all agricultural products for food and feed use.

The legislation regulates about 1,100 pesticides used currently or in the past in agriculture, both within the EU and outside its borders.

Article 18 requires a standard level of MRLs set at 0.01 mg / kg, for those pesticides which are not included in the Annexes to the Regulation.

The research has revealed significant differences among EUMED countries which are not part of the EU, in the domains of food labeling, contact materials, additives and pesticides. However, all States establish field-specific rules, which are contained in domestic laws and regulations.

Relevant discipline in EUMED countries non members of the EU

Food law is of particular relevance in the United Arab Emirates, where, according to the harmonization process undertaken within the Gulf Cooperation Council (GCC), labeling requirements are specified in GSO Standard 9/2013, whereas food expiry information are

UAE law

¹²⁶ Regulation (EC) No. 1333/2008 disciplines:

- The functional classes of food additives in foods, in food additives and food enzymes (Annex I);
- The list of authorized additives in foods and conditions of their use (Annex II);
- The Community list of food additives approved for use in food additives, food enzymes and food flavorings, and their conditions of use (Annex III);
- Traditional foods for which certain Member States may continue to prohibit the use of certain categories of food additives (Annex IV);
- The list of food colors for which the labeling of foods shall include additional information (Annex V).

¹²⁷ The Maximum Residue Level (MRL) for substances that do not appear in the lists is fixed at a standard level 0.01 mg/kg.

¹²⁸ The full text is available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:070:0001:0016:it:PDF>

disciplined in GSO Standard 150/2013 - in addition to requirements on packaging, additives, pesticides and other contaminants.¹²⁹

In Tunisia, the law requires that pre-packed food intended for sale be labeled, with stickers which cannot be separated from the container and must not contain any misleading indication; with Arabic as one of the languages adopted on the label.¹³⁰ Similarly, in Morocco, the law establishes that food products must be marketed in compliance with labeling requirements, in order to inform consumers on the main characteristics of products. Food business operators must withdraw from the market articles bearing non compliant labels, on pain of the seizure of infringing goods by the public authorities.¹³¹

**Food labeling
in Tunisia and
Morocco**

Provisions against misleading food labeling are also in force in Turkish law, which prohibits false claims attributing to food products unique characteristics or effects that are rather commonly found in all similar foods. Of great importance is the provision entrusting the importer with the responsibility for the labeling of imported food.¹³²

**Food labeling
in Turkey**

With regard to food contact materials, in Algeria Law 09-03 on consumer protection and fraud prevention specifies that food packaging and contact materials should prevent any risk of contamination.¹³³ In the same perspective, Turkish law imposes specific requirements for contact materials such as glass, paper, metal, plastic, ceramics and regenerated cellulose.¹³⁴

**Food contact
materials in
Algeria**

Food colourings, preservatives and additives are generally prohibited in Egypt, with the exception of substances authorized by the Minister of Health.¹³⁵ Conversely, in Algeria and Turkey the use of additives is generally authorized, in compliance with relevant legal requirements.¹³⁶ In Jordan, standards are set by the Jordan Institute for Standards and Metrology, and the Jordan Administration for Foods and Drugs, in accordance with international guidelines and thresholds established by the Joint FAO-WHO *Codex Alimentarius Commission*.¹³⁷

**Food colourings
and additives in
Egypt, Algeria,
Turkey, Jordan
and Serbia**

¹²⁹ See U.S. Department of Agriculture, Foreign Agricultural Service, Food and Agriculture Import Regulations and Standards (FAIRS) Report, FAIRS Country Report for GCC-4, 2014, available at: http://agriexchange.apeda.gov.in/IR_Standards/Import_Regulation/FoodandAgriculturalImportRegulationsandStandardsNarrativeDubaiUnitedArabEmirates5122014.pdf

¹³⁰ See Joint Ministerial Order of 3 September 2008, on the labeling of pre-packaged food.

¹³¹ See Article 16 Law 28-07/2010. To implement Articles 16-18 Law 28-07/2010, on May 16, 2013, the Moroccan government approved Decree 2-12-389 on food labeling. The full text is available at: <http://www.fnm.org.ma>

¹³² See Turkish Food Code, Regulations on the labeling of foodstuffs, issued on December 29, 2011, by the Minister of Agriculture and Rural Affairs, which also regulates the advertisement of foodstuffs.

¹³³ See Article 7 Law 09-03 on consumer protection in Algeria.

¹³⁴ See Turkish Food Code, Regulations on contact materials, published in Communication 28157 in December 2011 and subsequent amendments.

¹³⁵ See Article 10 of Law 10/1966; Decree of the Minister of Health 411/1997, which increases the number of artificial colors whose use is permitted as a food additive; Ministerial Decree No. 2188/2011, which establishes the Committee on Pesticides Agricultural (APC) within the Ministry of Agriculture, as the authority responsible for the registration of agricultural pesticides.

¹³⁶ For Algeria, see: Article 8 Law 09-03 on consumer protection in Algeria; Executive Decree n° 12-214 of 15 May 2012 on the conditions for the use of additives in food for human consumption, available at: <http://www.mincommerce.gov.dz/fichiers12/textereg/dec12214fr.pdf>

In Turkey, food additives are disciplined within the Turkish Food Code, published in Communication 28693 of June 2013 and amended in 2014. The law sets out the general conditions for the use of food additives.

¹³⁷ The General Standard for Food Additives (GSFA, STAN No. 192-1995) approved by the Codex Alimentarius Commission, established the conditions for the use of additives on foodstuffs and is available at: http://www.codexalimentarius.net/gsfaonline/docs/CXS_192e.pdf

Finally, Serbian law lays down detailed criteria in subject-specific national regulations.¹³⁸ With respect to plant protection products, Jordan, Morocco and Tunisia provide that any pesticide sold, imported or produced nation-wide should be registered and obtain administrative authorization, which is granted by the Minister of Agriculture.¹³⁹

**Discipline of
plant protection
products in
Jordan, Morocco
and Tunisia**

Specific provisions discipline the maximum residue levels for pesticides and other contaminants (including hormones, antibiotics and mycotoxins) in food products. In particular, in Serbia and Turkey, the law requires that these levels should be reviewed regularly to protect public health, according to new scientific developments.¹⁴⁰

**Maximum
Residue Levels
in Serbia and
Turkey**

¹³⁸ The Serbian Regulation on Food Additives (Official Gazette of R.S. No.63/13) lists admissible additives in foodstuffs manufacturing. According to the Regulation, additives are administered due to their effect on the organoleptic characteristics of foodstuffs. Approved additives are contained in a specific list within the Regulation. The amount used must comply with the rules specifically provided for each product group. Approved additives are divided into three groups: dyes, sweeteners and other additives.

¹³⁹ For Jordan, see Article 21 Law 13/2015 on Agriculture. For Morocco, see Law 32-00, on the import, production, storage and marketing of pesticides and the Decree 2-99-106 of 5 May 1999. For Tunisia, see Law 92-72, which regulates the trade, distribution and use of pesticides for agricultural purposes.

¹⁴⁰ See Serbian Regulation on Maximum residue levels for pesticides (Official Gazette R.S. No. 25/10 and No.28/11). For Turkey see Turkish Food Codex, Regulation on maximum residue limits of pesticides in foodstuff, issued in August 2014 and applicable to foodstuffs of animal and plant origin, which may contain pesticide residues.

4. Provisions against food fraud

EUMED countries which are members of the EU share a common set of principles regarding food fraud, arising from EU rules on food safety, including: a) the prohibition of fraudulent or deceptive practices;¹⁴¹ (b) the adulteration of food; and (c) the use of any other practices which may mislead the consumer.¹⁴² However, lacking at present a uniform definition of the concept of food fraud, the surveyed EUMED countries have adopted their own domestic definitions, listing a series of mostly coincident illicit conducts.

Common principles in EU countries

No common definition of food fraud

The main examples include, but are not limited to: the production and sale of food products which are unsafe, pose a risk to the health of consumers or are not suitable for human consumption; are altered, contaminated (with additives, pesticides or other chemicals), counterfeit or subjected to prohibited treatment; as well as the sale of food without the required administrative authorizations. Food frauds also include forgery of documents or certifications related to the products, failure to comply with the rules on labeling, packaging and containers, as well as misleading advertising.¹⁴³

The above offenses are punished regardless of their adverse effect on health. However, should a product be determined unsafe for human consumption, all EU Member States impose stricter penalties and qualify the conduct as a crime.

Despite some differences in national definitions, this study has shown that all conducts considered as food frauds in the EU Member States have three elements in common, namely: (a) the creation of a false belief about the properties of a product; (b) the malicious intention to deceive the consumer; (c) the profit-making objective.

In other words, EUMED countries which are members of the EU share common grounds to elaborate a definition of food fraud, focusing on prevention.

In its report 2013/2091, the European Parliament called for the adoption of a harmonized definition of food fraud at European level, on the basis of discussions with Member States, relevant stakeholders and experts, considering this definition essential for the development of a common approach in the fight against food fraud.¹⁴⁴

As a first step, in 2013 the Food Fraud Network (FFN) has been set up, bringing together representatives of the European Commission (Directorate General for Health and Consumers)

Food Fraud Network (FFN)

¹⁴¹ Foodstuffs are considered hazardous if harmful to health or unfit for human consumption.

¹⁴² See Article 8 Regulation (EC) No. 178/2002

¹⁴³ The rules are contained in the following acts: Commission Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods; Regulation (EU) No. 1169/2011 on the provision of food information to consumers; Regulation (EC) No. 853/2004 on the hygiene of foodstuffs; Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin; Regulation (EC) No. 854/2004 laying down specific rules for the organization of official controls on products of animal origin intended for human consumption; Regulation (EC) No. 1831/2003 on feed hygiene.

¹⁴⁴ European Parliament, Committee on the Environment, Public Health and Food Safety, Report on the food crisis, fraud in the food chain and the control thereof (2013/2091 (INI)), 4 December 2013.

and of EU Member States, as well as delegates from Iceland, Norway and Switzerland.¹⁴⁵ The initiative is aimed at strengthening coordination to tackle food frauds at national and transnational level.¹⁴⁶ The legal approach followed in EUMED countries which are not members of the EU to define the concept of food fraud is partially similar.

Analogies in definitions adopted by non-EU countries

In fact, Algeria, UAE, Egypt, Jordan, Lebanon, Morocco, Serbia, Turkey, and Tunisia attach great importance to the infringement of food safety and hygiene rules along the supply chain. Penalties are also provided for violations of the rules on preservatives, additives and contact materials, as well as in the event of food alteration or misrepresentation.

Moreover, Morocco, Serbia and Turkey punish the spreading of false information on food products, either through marketing campaigns, advertisement or misleading statements¹⁴⁷ - as provided by EU food law. In this context, of particular importance is article 10 of Law 13-83 / 1984 in Morocco, on the fight against commercial fraud. The text emphasizes the paramount role of advertising in the fight against food fraud, and prohibits any form of misleading communication to the consumers with regard to the essential characteristics of a food, its composition, quality, nutritional value, origin, quantity, date and method of production, properties, price, method of use, delivery; as well as on the contractual conditions, identity and quality of producers, sellers and agents.

Finally, the definition of food fraud is rather broad in Egypt, where the mere possession for commercial purposes of altered food, or equipment used to commit a food fraud, as well as their intentional import, are criminally prosecuted.¹⁴⁸

From a practical standpoint, in EUMED countries which are members of the EU, liability for food safety and fraud prevention is primarily entrusted to business operators, who are required to fulfill legal duties and to abide by Hazard Analysis and Critical Control Points (HACCP) principles in order to obtain registration or approval of their activities.¹⁴⁹

Responsibility for food safety in EU countries: the role of business operators

Besides, Article 19 of Regulation (EC) No. 178/2002 provides that if a food business operator considers or has reason to believe that a good which he has imported, produced, processed, manufactured or distributed is not in compliance with food safety requirements, it shall immediately initiate procedures to withdraw the foodstuffs from the market, whether the food has left the operator's immediate control and inform the competent authorities thereof. If the

Market withdrawal mechanisms of dangerous products

¹⁴⁵ The national contact points are the authorities designated by each EU Member State to ensure administrative and transnational co-operation assistance, where required to work in more than one country, in matters relating to violations of food safety legislation for profit-making purposes.

¹⁴⁶ According to the Report on the activities of the Network for Food Frauds, 60 cases were examined in 2014. Breaches mainly concerned non-compliance with the labeling requirements, false certifications and documents, ingredient substitution. The Report is available at:

http://ec.europa.eu/food/safety/official_controls/food_fraud/docs/food_safety_controls_fraud_networkactivity-report_2014.pdf

¹⁴⁷ See Article 10 Law 13-83/1984 on the repression of commercial fraud in Morocco, Article 30 Law on food safety in Serbia, Official Gazette R.S. No. 41/09, Article 24 Turkish Law 5996/2010 on veterinary services, plant health, food and feed.

¹⁴⁸ See Article 3 of Law 281/1994.

¹⁴⁹ See Article 1 letters (a) and (d); and Article 6 Regulation (EC) No. 852/2004.

product may have reached the consumer, the operator shall effectively and accurately inform the consumers of the reason for its withdrawal, and if necessary, recall from consumers products already supplied, when other measures are not sufficient to achieve a high level of health protection. In this respect, significant is the draft law presented in Italy by the *Commission established at the Legislative Office of the Ministry of Justice for the elaboration of policy proposals on the reform of agro-food crimes*, which punishes the failure to withdraw from the market products injurious to human health.¹⁵⁰ Of great importance is also the National Anti-Counterfeiting Council (Consiglio Nazionale Anticontraffazione - CNAC), chaired by the Minister of Economic Development or his/her delegate, which is the inter-ministerial body for supervision and strategic coordination of the initiatives undertaken by the public administration against counterfeiting, in order to enhance the law enforcement response on a national scale.

Legal reforms
in Italy

Specific withdrawal mechanisms for adulterated or toxic foods have also been set up in all EUMED countries which are not part of the EU.

Market
withdrawal
mechanisms in
non-EU countries

The United Arab Emirates, Morocco, Serbia and Turkey require food business operators to inform competent authorities, and promptly withdraw from the market, food products which they have imported, produced, processed, manufactured or distributed, in case they do not comply with safety requirements and are no longer under their direct control.¹⁵¹

If the product has already reached the consumers, national laws mandate business operators to provide timely and effective information about the reasons for the withdrawal and, if necessary, to recall the items from the consumers, when alternative measures are not sufficient to achieve a high level of health protection.

Food business operators are also due to inform and cooperate actively with the competent public authorities regarding the measures taken to limit risks to consumer health, in order to prevent, reduce or eliminate the threats related to food products.

In Turkey, specific penalties are in force for violations of due diligence imposed on operators, as in cases of failure to adopt appropriate measures in spite of the awareness that any food product imported, produced, processed, manufactured or distributed could pose risks to public health.¹⁵² Conversely, in Algeria the early warning system - an inter-ministerial mechanism managed by the Ministry of Trade - entrusts to administrative authorities the task to monitor food safety.¹⁵³ Should risks to consumers' health arise, the administration must take

Market
withdrawal
schemes in
Algeria, Jordan
and Tunisia

¹⁵⁰ See *Commission for the elaboration of policy proposals on the reform of agro-food crimes* (Ministerial Decrees of 20.4.2015, 30.4.2015 and 31.7.2015) Guidelines for the draft law on "Provisions on agro-food crimes" (14 October 2015).

¹⁵¹ See Article 10 Law 13-83/1984 on the repression of commercial fraud in Morocco, Article 33 Serbian Food Safety Law, Official Gazette R.S. No. 41/09, Article 22 of Law 5996/2010 on veterinary services, plant health, food and feed; Article 6 of Law 2/2008 of the Emirate of Abu Dhabi.

¹⁵² See Article 40 Turkish Law 5996/2010 on veterinary services, plant health, food and feed.

¹⁵³ The mechanism is coordinated by the Directorate General for Economic Control and Fraud Prevention, within the Ministry of Trade, which sets guidelines for quality control and is responsible for monitoring fraud.

precautionary measures, such as the withdrawal from the market and the seizure of unsafe products.¹⁵⁴

In Tunisia the law enables the Food and Drugs Administration and the Ministry of Economy to suspend the import, export or placement on the market of any product, including foodstuffs, which poses a serious and immediate threat to human health. Moreover, the Ministry of Economy can order food business operators to submit the products already on the market to further controls, should credible evidence of a potential harm to public health arise from their distribution, or should the characteristics of a new product justify the adoption of such precautionary measures.¹⁵⁵

To ensure the enforcement of food safety standards, EUMED countries which are part of the EU have introduced rules on official controls. In accordance with Regulation (EC) No. 852/2004 on the hygiene of foodstuffs and Regulation (EC) No. 882/2004 on official controls on feed and food law, animal health and welfare, all EU member states have entrusted the competent national authorities (a full list thereof is provided in Section VI) with inspection powers at national level, along the food supply chain. The authorities must also ensure that all goods¹⁵⁶ marketed in the EU comply with safety requirements.

Food safety controls in the EU: Regulation (EC) No. 852/2004 and Regulation (EC) No. 882/2004

The implementation of the regulations is ensured by multi-annual national control plans developed by Member States.

In this context, the specific role of the EU is to ensure the effectiveness of domestic control systems, through the Food and Veterinary Office (FVO), in charge of conducting inspections in Member States and in third countries which export goods to the European market.¹⁵⁷ The UAV verifies that control systems established in these countries are appropriate to ensure compliance with EU food safety standards. To this end, it identifies possible legal or operational shortcomings.

The Food and Veterinary Office (FVO)

However, the number of inspections carried out on a yearly basis by the UAV is limited due to the lack of human and technical resources, as well as of adequate competences for an incisive action against food fraud.¹⁵⁸

Official inspections are conducted without prior notice and at any stage of production, processing or distribution. They may be motivated by a risk assessment or the mere suspicion of non-compliance with legal requirements - possibly in connection with past records of operators or the possible risks for the food chain associated with their activity.¹⁵⁹

¹⁵⁴ See Articles 17-22, 12-203 Executive Decree of 6 May 2012, available at: <http://www.joradp.dz/FTP/JO-FRANCAIS/2012/F2012028.pdf>.

¹⁵⁵ See Article 8 Law 17/1992 on consumer protection in Tunisia.

¹⁵⁶ The term refers both to domestic products and to imported or exported goods.

¹⁵⁷ The role and mandate of FVO are fully examined in Section VI. More information is available at: http://ec.europa.eu/food/food_veterinary_office/index_en.htm.

¹⁵⁸ See European Parliament, Committee on the Environment, Public Health and Food Safety, Report on the food crisis, fraud in the food chain and the control thereof (2013/2091 (INI)), 4 December 2013.

¹⁵⁹ See Article 3 Regulation (EC) No. 882/2004.

Articles 10 et seq. of Regulation (EC) No. 882/2004 empower the competent national authorities to: access the company; inspect production facilities; check hygiene conditions and workers' qualifications; conducting examination of documents and control system adopted by the operator, acquire relevant documents and business registers; seizure and detention of suspect foods; acquisition and analysis of samples.

Competences
of national
authorities

Business operators are subject to official controls regardless of the market share held.

Should an inspection determine that food products are unfit for human consumption, or injurious to health, the inspectors must ensure that due measures are taken to address non-compliance. In accordance with Article 54 of Regulation (EC) No. 882/2004, possible measures include the imposition of sanitation procedures; the restriction or prohibition of the placing on the market, import or export of feed, food or dangerous animals; monitoring and, if necessary, recall, withdrawal and / or destruction of feed or food. The authorities may also order the suspension of operations or the closure of all or part of the business concerned for an appropriate period, or the suspension or withdrawal of the business license.

Measures and
sanctions

Member States may impose sanctions to operators who refuse or obstruct inspections, as well as for non-compliance with enforcement measures. Slovenia, for example, punishes such behaviors with fines ranging from 500 to 3,000 euro.¹⁶⁰

In order to prevent food fraud, eliminate risks to human health and ensure consumer protection, also EUMED countries which are not members of the EU have introduced official controls carried out on a regular basis.

Food safety
controls in non-
EU countries

Particularly significant in this regard are the provisions in force in Morocco and Turkey, which mandate the seizure of toxic or altered products, as well the suspension of business operations until the adoption of the necessary measures to ensure consumer safety, so as to limit the risks associated with unsafe foodstuffs.¹⁶¹

Similarly, in Algeria law enforcement authorities may take precautionary measures to protect public health, including the seizure and destruction of counterfeit products.¹⁶²

A specific legal provision is in force in Morocco against attempts to obstruct official controls on food safety and hygiene, which are criminally prosecuted and subjected to a term of imprisonment from 3 months to 1 year and a fine ranging from 200 to 6,000 dirham (from about 20 to about 550 euro).¹⁶³ Also in Tunisia non-compliance with official controls is punished with a fine from 500 to 20,000 dinar (about 215 to about 8,600 euro) and with a term of imprisonment from 16 days to 3 months.¹⁶⁴

¹⁶⁰ See Article 177 (2) Agriculture Act, available in Slovenian at: <http://faolex.fao.org/docs/html/slv101914.htm>.

¹⁶¹ See Article 32 Turkish Law 5996/2010 on veterinary services, plant health, food and feed.

¹⁶² See Article 29 Law 09-03 on consumer protection in Algeria.

¹⁶³ The penalty ranges from 20 to 600 euro. See Article 9 of Law 13-83 on the repression of commercial fraud in Morocco.

¹⁶⁴ See Articles 9 and 33 Law 19/1992 on consumer protection in Tunisia.

As regards sanctions in case of food frauds, it is worth noting that EUMED countries have adopted different national solutions. However, as the European Parliament pointed out in its 2013 report, there is an urgent need for harmonization, since the complexity and cross-border nature of the food supply chain, together with the national nature of controls, sanctions and enforcement measures, could increase the risk of food fraud.¹⁶⁵

Food fraud
prosecution

Within the EU, Bulgaria, Portugal, Romania, Slovenia and Spain provide both criminal and administrative sanctions. The latter may reach 600,000 euro (mandated by Spanish legislation), and may vary depending on the legal status of the offender (in Portugal, the fines range from 99 to 3740.98 euro for individuals and up to 44,891.81 euro for legal entities).¹⁶⁶

Administrative
and criminal
sanctions

The same approach is followed in Turkey, where administrative sanctions are in force against primary producers, sellers and business operators along the supply chain for non-compliance with legal and regulatory standards of hygiene, with the HACCP protocol for food and feed safety¹⁶⁷, along with the unauthorized production, storage and processing of food products.¹⁶⁹ Additionally, food and feed which are unfit for human consumption must be withdrawn from the market at the expenses of the responsible operator, who bears criminal liability for risks to public health.¹⁷⁰

Croatia, France, Italy and Malta provide for criminal sanctions against food frauds, which will be examined in detail in the next section. The same approach has been adopted by EUMED countries which are not part of the EU, with the exception of Turkey.

Furthermore, the domestic laws of EU member states, as well as the regulatory system in Algeria, Lebanon, Morocco and Tunisia mandate the seizure of illegal products and of the equipment used to commit the fraud.¹⁷¹

¹⁶⁵ See European Parliament, Committee on the Environment, Public Health and Food Safety, Report on the food crisis, fraud in the food chain and the control thereof , (2013/2091 (INI)), 4 December 2013.

¹⁶⁶ See Article 52 Spanish Law 17/2011 on food security and nutrition; Article 28 of Decree-Law 560/1999 in Portugal.

¹⁶⁷ See Article 41 Turkish Law 5996/2010 on veterinary services, plant health, food and feed.

¹⁶⁹ See Article 41 (b) Turkish Law 5996/2010 on veterinary services, plant health, food and feed.

¹⁷⁰ See Article 40 Turkish Law 5996/2010 on veterinary services, plant health, food and feed.

¹⁷¹ See Article 82 Law 09-03 on consumer protection in Algeria, Article 125 Lebanese consumer protection Law, Article 11 Law 13-83/1984 on the suppression of commercial fraud in Morocco, Article 43 Law 19/1992 on consumer protection in Tunisia.

5. Crimes against intellectual property and food fraud

All the surveyed EUMED countries provide for criminal sanctions for intellectual property rights infringements.

Member of WTO are required to impose criminal penalties for the most significant infringements of intellectual property rights in compliance with Part III of the TRIPS Agreement on enforcement. Sections II-V regulate in particular civil and administrative remedies, provisional measures, along with requirements for Customs intervention and criminal prosecution.¹⁷²

TRIPS
provisions on
sanctions for
IPR
infringements

The TRIPS Agreement distinguishes between criminal activities in general, for which civil remedies are provided, and counterfeiting and piracy, for which criminal prosecution and border measures must also be available.

Article 61 of the TRIPS Agreement specifies that criminal procedures and penalties shall be provided to intellectual property right holders, at least in cases of wilful trademark counterfeiting and of copyright infringements on a commercial scale. However, Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of infringing goods and of any equipment used to commit the offence.¹⁷³

5.1 Trademark counterfeiting

Criminal sanctions for trademark counterfeiting vary significantly among EUMED countries which are members of the WTO. Tunisia only provides for a fine ranging from 5,000 to 50,000 dinar (about 2,300 to 23,000 euro);¹⁷⁴ whereas the most lenient term of imprisonment - notably two months - is established by Egypt. The strictest penalties, namely a term of imprisonment up to five years, extended to eight in the event of recidivism, may be imposed in Bulgaria.¹⁷⁵

Sanctions in
WTO member
countries

¹⁷² The full text of the TRIPS Agreement is available at:
https://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm

¹⁷³ See Article 61 TRIPS Agreement.

¹⁷⁴ See Article 51 Law 36/2001. Pursuant to Article 53 Law 36/2001, in case of recidivism a prison term may be inflicted and monetary fines can be doubled.

¹⁷⁵ See Article 113 of Law 82/2002 on the protection of intellectual property rights in Egypt establishes that the counterfeiting, imitation and unauthorized use of registered trademarks for commercial purposes, as well as the deliberate sale and distribution of products bearing a counterfeit or imitated trademark, are sanctioned with a two months prison term and a fine from 5,000 to 20,000 lira.

According to Article 172b of the Bulgarian Criminal Code, the unauthorized use of a trademark, industrial design, geographical indications for commercial purposes, as well as counterfeiting thereof, are punishable by imprisonment

In Croatia, the achievement of a significant economic benefit or the causation of a serious prejudice to the right holder are aggravating circumstances and may result in a prison sentence up to two years, as well as in a fine ranging from 6,000 to 30,000 euro.¹⁷⁶ Conversely, in Spain, the achievement of a small economic benefit is considered as a mitigating circumstance and entails the application of a pecuniary sanction to be paid on a daily basis, for a period of three to six months,¹⁷⁷ or a sentence of community services for a period of one to two months.¹⁷⁸

The Romanian law provides for a term of imprisonment from one to five years if intellectual property infringements involve criminal conspiracy or threaten consumer safety, supplemented by the loss of certain rights - including the right to exercise a profession or carry out the activity through which the crime was committed.¹⁷⁹

In a comparative perspective, it is worth noting that the Greek law punishes the mere transit on the national territory of counterfeit goods intended to a third country with a term of imprisonment up to six months.¹⁸⁰ In Morocco, the imitation or fraudulent use of a registered trademark, liable to mislead the consumer, is subjected to imprisonment from two to six months and a fine ranging from 50,000 to 500,000 dirham (about 4,700 to 47,000 euro).¹⁸¹

Also EUMED countries which are not members of the WTO, namely Algeria, Lebanon and Serbia, have adopted criminal provisions against trademark infringement. In this respect, the Lebanese law establishes the strictest penalty, namely a term of imprisonment from three months to three years.¹⁸² Moreover, each of the above mentioned countries provides financial penalties, which are particularly severe in Algeria, ranging from 2,500,000 to 10,000,000 dinar (about 21,000 to 86,000 euro).¹⁸³ Serbian law adopts a different approach, since it does not mandate imprisonment for trademark counterfeiting, but different ranges of monetary fines, with tougher penalties for legal persons, supplemented by a fine for the legal representative of the liable company. Further penalties consist in the confiscation and destruction of infringing goods and of the equipment used for illicit purposes.¹⁸⁴

Sanctions in
non-WTO
member
countries

up to five years and a fine up to 5,000 lev. In case of repeated offenses, or if the infringement has caused significant prejudice to the right holder, the prison term ranges from five to eight years and the fine from 5,000 to 8,000 lev.

¹⁷⁶ This provision applies only if a sign identical or similar to a registered trademark is used to designate identical or similar categories of products.

¹⁷⁷ In Spain, the amount of the fine is expressed in terms of days.

¹⁷⁸ If the unduly acquired profit does not exceed 400 euro, a fine to be paid daily for a period of one to two months applies.

¹⁷⁹ The deprivation of certain rights is disciplined by Article 66 of the Criminal Code and may include, among other things, the suspension of political rights, parental rights, or the right to leave the Romanian territory. At the discretion of the Court, the rights of civil servants to hold managerial positions, as well as to engage in the activity exploited to commit the crime, may also be suspended.

¹⁸⁰ See Article 125, paragraph 4, letter (a) Trademarks Law.

¹⁸¹ See Article 226 Moroccan Law 17-97/2000.

¹⁸² See Article 114 Lebanese consumer protection Law. In Algeria, Article 32 Ordinance 03-06 on Trademarks clarifies that trademark counterfeiting is subjected to a prison term up to two years.

¹⁸³ See Article 32 Ordinance 03-06 on Trademarks in Algeria. Article 114 Lebanese consumer protection Law mandates a fine from 40,000,000 to 75,000,000 lira (about 23,650 to 44,350 euro) for trademark counterfeiting.

¹⁸⁴ See Article 84 of the Serbian Trademark Law provides that trademark infringements are subjected to a fine from 100,000 to 3,000,000 dinar (about 810 to 24,300 euro), when committed by a legal person. An additional penalty from 50,000 to 200,000 dinar (about 405 to 1,620 euro) is also inflicted to the legal representative of the company. Pursuant to Article 85, if infringements are carried out by entrepreneurs, the fine ranges from 50,000 to 500,000 dinar (about

5.2 Patent counterfeiting

Sanctions in
WTO member
countries

In order to strengthen the protection of industrial property rights, all the surveyed EUMED countries impose prison sentences for patent infringements, with the exception of Malta, which only provides for monetary fines ranging from 232.94 to 11,646.87 euro, based on the seriousness of the crime.¹⁸⁵

In particular, French law punishes patent infringements carried out by organized criminal groups, with a term of imprisonment up to five years, supplemented by a fine up to 500,000 euro.¹⁸⁶

Likewise, both Italian and Turkish laws provide strict penalties for violations of a patent. According to Article 473 of the Italian Criminal Code, *"who forges or alters domestic or foreign patented inventions, industrial designs, or without taking part in the counterfeiting or alteration, makes use of such inventions, designs or models is subjected to imprisonment from one to four years and a fine of 3,500 to 35,000 euro"*.¹⁸⁷

In Turkey, Article 73/A letter (b) of Decree-Law 551/1995 states that carrying out acts of exploitation of an invention without the authorization of the patent holder - such as the attribution of a license to a third party - is subjected to imprisonment from two to three years. Equally sanctioned is the use of distinctive signs on a product, on its packaging, on the commercial documents, or in its promotional material, to create the false impression that the goods are protected by a patent. Such provision is applicable even if these acts have been committed after the expiry, annulment or cancellation of the patent.

Article 73/A letter (c) indicates that the illegal exploitation of a patent, through one of the acts listed in Article 136, is subject to a term of imprisonment from two to four years and to a

405 to 4,050 euro); whereas natural persons are punishable by a fine from 10,000 to 50,000 dinar (about 80 to 400 euro). Moreover, counterfeit products must be confiscated and destroyed.

¹⁸⁵ Prohibited are the circulation and sale of merchandise bearing signs which refer to patent protection if the products are not patented.

¹⁸⁶ See Article L615-14 of the French Intellectual Property Code.

¹⁸⁷ In accordance with Legislative Decree 16 March 2015, n. 28, the Italian law provides that punishability may be excluded for crimes subjected to a prison term up five years and/or a monetary fine, when the offense is negligible and the convict is not a persistent offender, considering the circumstances of the case and if the consequences of the offence are minor, in light of Article 133, paragraph 1, Criminal Code.

monetary fine determined by the Court.¹⁸⁸ As an accessory penalty, the Court may order the closure of the industrial and commercial plant of the convict for not less than one year.¹⁸⁹

With respect to EUMED countries which are not members of the WTO, Lebanon provides for the strictest penalties for patent infringements, namely imprisonment from three months to three years.¹⁹⁰

Sanctions in
non-WTO
member
countries

As for the cases of trademark counterfeiting, the three countries also impose financial penalties, with the most severe sanctions applied in Algeria.¹⁹¹ In Lebanon, the offender is required to compensate the patent owner for material and moral damages, for the loss of earnings and the unduly acquired profits.¹⁹²

Mirroring the approach adopted in cases of trademark counterfeiting, in Serbia, Article 170 of the Patent Act provides that violations are subjected to progressive fines depending on the legal status of the offender.¹⁹³

As an accessory penalty, in Lebanon and in Serbia the Courts may also order the seizure of counterfeit products and of the tools used to commit the crime.¹⁹⁴

5.3 Industrial drawing and design counterfeiting

EUMED States share common principles with respect to the legal protection of registered industrial drawings and designs. In particular, each of the surveyed countries allows the legitimate right holders to request precautionary measures to halt the effects of infringements. Upon criminal conviction, the Court may also order the confiscation of counterfeit objects and of the machinery used by the offender to commit the crime.

Criminal penalties for violations of industrial designs still vary significantly among EUMED countries which are members of the WTO.

Sanctions in
WTO member
countries

¹⁸⁸ Article 136 of Decree-Law 551/1995 qualifies the following as patent infringement:

- manufacturing a product, which is the subject of the invention, without the consent of the patent holder;
- selling, distributing or placing on the market, importing or storing for such purposes, protected products, where the person concerned knows or should know that such products are patented;
- using the patented process, as well as selling, distributing or placing on the market, importing or storing for such purposes products directly obtained through a patented process; without the consent of the patent holder;
- enlarging the scope of the rights granted by the patent holder on the basis of a contractual license, or granted by compulsory license, or transferring such rights to third persons, without permission;
- participating in acts foreseen in subparagraphs 1 to 4 of this present Article, or assisting or inducing/encouraging them or facilitating, in any way and under any circumstances, their occurrence/perpetration;
- Refraining from declaring the source and the process used to obtain patented products without the authorization of the right holder.

¹⁸⁹ According to Article 73 letter (a), if patent infringements are committed by the personnel of a company, in the performance of their professional duties, criminal liability is extended to the employees, the owner or his/her representative and the person who effectively manages the undertaking, and who have not prevented the crime.

¹⁹⁰ See Article 42 Lebanese Patent Law.

¹⁹¹ In Algeria, Article 61 of Ordinance 03-07 imposes a fine from 2,500,000 to 10,000,000 dinar (about 20,280 to 81,130 euro). According to Article 42 Lebanese Patent Law, patent infringements are punishable by a fine from 5,000,000 to 50,000,000 lira (about 2,960 to 29,660 euro).

¹⁹² See Article 41 Lebanese Patent Law.

¹⁹³ Fines range from 100,000 to 2,000,000 dinar (about 810 to 16,200 euro) if infringements are committed by legal persons. When violations are attributed to entrepreneurs, sanctions range from 50,000 to 500,000 dinar (about 405 to 4,050 euro). Natural persons are subjected to a fine from 50,000 to 150,000 dinar (about 405 to 1,215 euro). As an accessory penalty, infringing items and the equipment used to commit the offense must be confiscated and destroyed.

¹⁹⁴ See Article 48 Lebanese Patent Law.

France and Italy respectively apply the strictest financial and prison sentences. According to French law, infringements of industrial designs are punished with imprisonment up to three years and a fine of 300,000 euro.¹⁹⁵ Penalties are increased to five years' imprisonment and a fine of 500,000 euro if two or more persons jointly engage in a criminal infringement, if the violation is committed through an information network system, or if it relates to goods which are hazardous to human or animal health and safety.¹⁹⁶

Article 473 Italian Criminal Code provides that if the infringement of the industrial drawing or design is carried out systematically or through the setting up of organized activities, a term of imprisonment from two to six years is applicable.

Of particular relevance is also the Maltese legislation, which prosecutes the unauthorized use of a registered industrial drawing or design, the falsification of the National Register of Industrial Designs, along with any misrepresentation of a product drawing or design as protected by an intellectual property right.¹⁹⁷ The unauthorized use of a registered industrial drawing or design is punished with imprisonment up to three years or fine of up to 23,293.73 euro.

Also EUMED countries which are not members of the WTO, namely Algeria, Lebanon and Serbia have adopted criminal provisions for the protection of registered industrial drawings and designs. In this respect, Algeria provides for a fine ranging from 500 to 15,000 dinar (about 5 to 120 euro). In the event of recidivism, or if the offender is an employee working under the supervision of the legitimate owner of the registered design, the Algerian law provides for imprisonment up to six months.¹⁹⁸

Sanctions in
non-WTO
member
countries

Serbian law adopts an alternative perspective, since it does not provide for prison terms in cases of violation of a registered design, but rather for different levels of financial penalties, which are stricter for legal entities, and supplemented by a specific fine to the legal representative of the liable company. Moreover, the Court may order the confiscation and destruction of infringing goods and of the equipment used to commit the crime.¹⁹⁹

The industrial drawings and designs law in Lebanon is currently under revision through a general reform which affects the overall regime of intellectual property rights. The new bill provides for monetary fines ranging from 5,000,000 to 50,000,000 lira (about 2,950 to 29,500

¹⁹⁵ See Article L521-10, Book V, of the French Intellectual Property Code.

¹⁹⁶ *Ibid.*

¹⁹⁷ See Articles 117, 118, 119 Law on Patents and Designs.

¹⁹⁸ See Article 23 Ordinance 66-86 on Designs in Algeria.

¹⁹⁹ Article 75 of the Industrial Designs Law provides that infringements of registered designs are punishable by a fine from 100,000 to 3,000,000 dinar (about 810 to 24,300 euro) when committed by legal persons. An additional fine from 50,000 to 200,000 dinar (about 405 to 1,620 euro) is also inflicted to the legal representative of the responsible company.

According to Article 76 Industrial Designs Law, when infringements are committed by entrepreneurs, the fine ranges from 50,000 to 500,000 dinar (about 405 to 4,050 euro). Infringers attributed to natural persons are subjected to a fine from 10,000 to 50,000 dinar (about 80 to 405 euro). As an accessory penalty, counterfeit products are confiscated and destroyed.

euro) in case of violation of registered industrial designs or models, in addition to imprisonment from two months to two years.²⁰⁰

5.4 Copyright piracy

In compliance with the TRIPS Agreement, sanctions for copyright infringements in EUMED countries which are members of the WTO range from a one-month prison sentence (established by Egyptian law) up to twelve years of imprisonment (which may be inflicted in the most serious cases in Romania).²⁰¹

Sanctions in
WTO member
countries

If the violation is committed through an information network system, as an accessory penalty, French Courts may suspend for one year the contract in force between the offender and any Internet service provider (ISP). While serving the sentence, the convicted is legally prevented from subscribing a new contract with any ISP.²⁰²

Recognizing the severe impact of online piracy, all the surveyed EUMED countries, with the exception of Algeria, prohibit the manufacture, assembly or import for sale, or rental of any device, means or tool designed or constructed to circumvent technological protection measures, such as encryption, used by the author of an original work or the holder of related rights. Unlawful are also voluntary removal and avoidance of these protection systems.²⁰³

Furthermore, the French, Italian and Jordanian laws establish that in cases of criminal conviction for copyright infringement, the Court may also order the temporary or permanent closure of the premises used to carry out the illicit activity.²⁰⁴

In France, criminal copyright infringements committed by an organized criminal group are subjected to a five years term of imprisonment, supplemented by a 500,000 euro fine.

In cases of copyright infringements all the surveyed countries mandate the seizure of all phonograms, videograms, articles and illegally reproduced copies, as well as of the equipment used to commit the crime.

²⁰⁰ The full text of the Draft Law on the Protection of Industrial Drawings and Designs is available at: http://www.economy.gov.lb/public/uploads/files/3743_6860_2795.pdf.

²⁰¹ Article 181 of Law 82/2002 on the protection of intellectual property rights in Egypt prohibits the unauthorized sale, rent, circulation and export of a protected work, as well as the unauthorized reproduction of phonograms and videograms broadcast in Egypt or in third countries. Equally prohibited is the unauthorized dissemination of the above through the Internet. In general, Article 181 paragraph 7 punishes violations of moral and economic rights of the holder of a copyright by a one-month prison term and a fine from 5,000 to 10,000 lira (about 505 to 1,010 euro).

According to Article 139 paragraph 6 of the Romanian Copyright Law, the production and distribution of pirated products, as well as the placement of the goods on the domestic market, are punishable by imprisonment from two to five years. Should the infringer obtain a significant illicit profit, as well as in case of involvement of criminal organizations, the prison term ranges from five to fifteen years.

²⁰² See Article L335-7 French Intellectual Property Code.

²⁰³ The Algerian copyright law does not regulate Technical Protection Measures (TPM). However, Articles 394 *bis* to 394 *nonies* of the Criminal Code prohibit unauthorized access to protected data on computer networks. Infringements are punishable by imprisonment from two months to three years and a fine from 50,000 to 5,000,000 dinar (about 405 to 40,500 euro).

²⁰⁴ See Article L335-5 French Intellectual Property Code and Article 174 *quinquies* Italian Copyright Law.

Pursuant to Article 171 bis of the Italian copyright law, the unlawful duplication of computer programs for profit, along with the import, distribution, sale, storage for commercial or business purposes, or rental of software not duly marked by the Italian Society of Authors and Publishers (SIAE) is subjected to a prison term of six months to three years and a fine from 2,582 to 15,493 euro.

Among EUMED States which are not part of the WTO, the strictest penalties for copyright infringements are provided by the Lebanese law, which imposes imprisonment from one month to three years and a fine of 5,000,000 to 50,000,000 lire (about 2,950 to 29,500 euro).²⁰⁵ In line with the approach adopted for intellectual property rights, Serbian law only establishes monetary fines, which are stricter for legal persons than for natural persons.²⁰⁶

Both in Lebanon and in Serbia the Court may order the confiscation of proceeds of crime, of counterfeit goods and of the equipment used to commit the crime.²⁰⁷

Sanctions in non-WTO member countries

5.5 Geographical indication counterfeiting and violations of food safety standards

Concerning the agro-food sector, 15 out of 19 surveyed countries have introduced specific criminal provisions against the unlawful use of registered appellations of origin and geographical indications, which include prison terms and monetary fines.²⁰⁸

Sanctions for geographical indications counterfeiting

In particular, in Bulgaria, Croatia, Jordan, Morocco, Serbia and Tunisia, the unlawful use of registered appellations of origin and geographical indications is subjected only to monetary fines; whereas in Algeria, Egypt, France, Italy, Portugal, Romania, Slovenia, Spain and Turkey, prison sentences may also be imposed.

In this regard, French law is particularly strict, as it punishes the fraudulent use of registered appellations of origin and geographical indications with imprisonment up to two years and a fine up to 300,000 euro. Severe penalties are also in force in Algeria, Portugal, Romania and Slovenia, where such illicit conducts are subjected to imprisonment up to three years.²⁰⁹ With reference to food safety, all the surveyed countries attach great importance to the integrity of food products intended for human consumption and impose prison sentences,

Sanctions for infringements of food safety rules

²⁰⁵ See Article 85 Lebanese Law on the protection of literary and artistic property; Articles 151 and 153 Ordinance 03-05 on copyright and related rights in Algeria, which punishes copyright infringements with imprisonment from six months to three years and a fine from 500,000 to 1,000,000 dinar (about 4,010 to 8,020 euro).

²⁰⁶ Pursuant to Article 215 Serbian Law on Copyright and Related Rights, piracy of protected works is punishable by a fine from 100,000 to 3,000,000 dinar (about 810 to 24,300 euro) if committed by a legal person. Article 215 paragraph 2 establishes that the legal representative of the responsible company is subjected to a fine from 50,000 to 200,000 dinar (about 405 to 1,620 euro). In accordance with Article 216 of the Serbian Law on Copyright and Related Rights, breaches of copyright committed by entrepreneurs are sanctioned with a fine from 50,000 to 500,000 dinar (about 405 to 4,055 euro).

²⁰⁷ See Article 215 paragraph 3 of the Serbian Law on Copyright and Related Rights and Article 86 of the Lebanese law on the protection of literary and artistic property.

²⁰⁸ Such provisions are in force in Algeria, Bulgaria, Croatia, Egypt, France, Italy, Jordan, Morocco, Portugal, Romania, Serbia, Slovenia, Spain, Tunisia and Turkey.

²⁰⁹ See Article 30 Ordinance 76-65 on Appellations of Origin in Algeria; Article 325 of the Portuguese Industrial Property Code; Article 90 Romanian law 84/1998 on trademarks and geographical indications; Article 233 of the Slovenian Criminal Code.

supplemented by monetary fines for the manufacture and trade of adulterated and hazardous foodstuffs.

As anticipated, Bulgaria, Greece, Portugal, Romania, Slovenia, Spain and Turkey have established a dual mechanism, which includes administrative and criminal sanctions, while other States provide only criminal penalties, including monetary fines and prison terms. France, Spain and Turkey currently adopt the strictest provisions for the protection of the agro-food sector.

The French Consumer Code contains a specific provision against the export outside the EU of food or feed products which are hazardous to human or animal health, in breach of Regulation (EC) No. 178/2002. Such conduct is punishable with a five years term of imprisonment and a 600,000 euro fine.²¹⁰ Section II of Chapter III Consumer Code also specifies that alterations and intentional sales of hazardous or toxic food, beverages and agricultural products intended for human or animal consumption are sanctioned with two years imprisonment and a fine of 300,000 euro.²¹¹ The same penalties apply in case of intentional sale and advertising of tools and equipment used for food adulteration.

The exemplary punishment according to French law

Should toxic or adulterated foodstuffs pose a risk to human or animal health, or should the fraud be committed by an organized criminal group, penalties are increased to a seven years prison term and a 750,000 euro fine. Consumer awareness of the fraudulent nature of the goods neither excludes nor mitigates the application of sanctions.

Finally, pursuant to article L217-11 of the French Consumer Code, food business operators who are aware that any product they imported, produced, processed or distributed represents a threat to human health, but fail to withdraw it from the market or to establish adequate internal controls - in breach of articles 19 and 20 of Regulation (EC) No. 178/2002 - are subjected to a prison term of five years and a 600,000 euro fine.

Following the entry into force of Law 4235/2014 - laying down administrative measures, procedures and sanctions for the implementation of EU and national rules on food, feed, animal health and animal welfare - the Greek law has increased sanctions against the obstruction to food safety controls. In particular, Article 23 of Law 4235/2014 provides that if the identified infringement is likely to entail a serious risk to public health, a monetary sanction from 61,000 to 500,000 euro is inflicted to the business operator.

Sanctions provided by Greek Law 4235/2014

Tougher sanctions for breaches of food safety law have recently been adopted in Jordan, with the entry into force of Law 30/2015. Article 22 establishes that the marketing of food products which are counterfeit or not-compliant with labeling requirements is subjected to a monetary fine from 1,000 to 5,000 dinar (about 1,260 to 6,320 euro). The same punishment is provided

The repression of food fraud in Law 30/2015 of Jordan

²¹⁰ See Article L213-2-1 of the French Consumer Code.

²¹¹ See Article L213-3 of the French Consumer Code.

for managing industrial or commercial operations in the agro-food sector without the required administrative authorizations.

Article 22 further specifies that the placing on the market of adulterated food is subject to a fine ranging from 3,000 to 5,000 dinar (about 3,790 to 6,320 euro). In case of recidivism, a prison term from three months to one year and a fine from 5,000 to 10,000 dinar (about 6,320 to 12,640 euro) are applied. Moreover, the Court may order the closure of industrial or commercial premises involved in illicit activities.

With respect to Spain, Article 363 of the Criminal Code prevents food business operators from endangering consumer safety through the sale of adulterated products, which do not comply with food safety requirements, or by trading in counterfeit or expired foodstuffs. Penalties include imprisonment from one to four years, a monetary fine to be paid for a period from six to twelve months and the revocation of the business license for three to six years. As specified by Article 366 of the Spanish Criminal Code, upon conviction for crimes against food safety, the Court may either order the closure of industrial and commercial premises involved in illicit activities up to five years, or permanently revoke the business license in the most serious cases. In the same perspective, Article 185 of the Turkish Criminal Code states that all food fraud-related activities, posing a threat to human life or health, are punished with imprisonment from two to fifteen years. Article 186 clarifies that the sale, supply and storage of contaminated or adulterated foodstuffs or beverages potentially injurious to human life or health, are subjected to a prison sentence of one to five years.

Penalties
according to
Spanish law

Penalties
according to
Turkish law

In Italy, food fraud is not criminally prosecuted as such. However, the *Commission for the elaboration of policy proposals on the reform of agro-food crimes* has put forward a draft law, advocating the introduction of a new section in the Italian Criminal Code, dedicated to *fraud in the trade of foodstuffs*. The new section is specifically aimed at dealing with the emerging threat of food fraud carried out on a commercial scale by organized crime groups, exploiting the complexity of the supply chain. In this regard, the draft law supports the introduction of the crime of agro-piracy, which punishes food fraud committed systematically, or through organized activities. The initiative intends to crack down on food fraud posing a risk to public health and to rationalize related penalties, which vary according to the seriousness of the violation. Finally, great emphasis is placed on the involvement of companies in fraudulent practices, since they currently represent the major players in the food supply chain.²¹²

Italy and the
Commission for the
elaboration of policy
proposals on the
reform of agro-food
crimes

²¹² See *Commission for the elaboration of policy proposals on the reform of agro-food crimes* (Ministerial Decrees of 20.4.2015, 30.4.2015 and 31.7.2015) Guidelines for the draft law on “Provisions on agro-food crimes” (14 October 2015).

6. National Authorities and Police forces responsible for the fight against counterfeiting and food fraud

All the surveyed EUMED States rely on specific public authorities for the protection of intellectual property rights.²¹³ Despite some discrepancies in the respective mandates, these institutions manage the registration of copyright and industrial property rights and establish the extent of their protection. They also contribute to the development of intellectual property policies, legislation and anti-counterfeiting initiatives, including information campaigns aimed at economic operators.

Public authorities for IPR protection

Finally, intellectual property offices ensure coordination with relevant national and international stakeholders, law enforcement authorities, the EU and UN agencies.

In Egypt,²¹⁴ Italy, Lebanon,²¹⁵ Malta, Slovenia, Spain,²¹⁶ Turkey²¹⁷ and United Arab Emirates²¹⁸ dedicated sections within law enforcement authorities are in charge of the fight against counterfeiting and piracy. Some EUMED States - including Italy (see below), Malta²¹⁹ and Slovenia²²⁰ - have entrusted to the Financial Police the task to prosecute such crimes, due to the links with tax evasion, labor exploitation, money laundering and reinvestment of proceeds of crime.

Dedicated sections within law enforcement agencies

In particular, the Italian Guardia di Finanza conducts investigations involving surveillance and large scale operations to identify and dismantle the counterfeit products' supply chain, from import channels to storage areas and the main distribution hubs.

The Italian example: the Guardia di Finanza

²¹³ A list of national intellectual property offices is available at: <http://www.wipo.int/directory/en/urls.jsp>

²¹⁴ The Police Anti-Piracy Department was established in 1996 within the Ministry of Interior. Based in Cairo, the unit is responsible for the protection of copyright and related rights on literary and artistic works; it ensures the enforcement of national and international law, it investigates cases of counterfeiting and holds relationships with the business community.

²¹⁵ In September 2005, the Lebanese Ministry of the Interior has set up the Cybercrime and Intellectual Property Bureau, within the Judicial Police Department, which receives allegations of infringements from intellectual property rights holders.

²¹⁶ As clarified by the Ministry of Interior Order INT/2678/2015, the General Directorate of the Judicial Police (*Comisaría General de Policía Judicial*) relies on dedicated units for investigations which require particular expertise, such as intellectual property-related violations, attributed to the Central Brigade for Investigating Specific Crimes (*Brigada Central de Investigación de la Delincuencia Especializada*). Further information on specialized sections within the Spanish Police is available at: http://www.policia.es/org_central/judicial/udev/udev.html.

²¹⁷ A division dedicated to intellectual property crimes was established in 2003 within the General Directorate of the Turkish Police, in order to strengthen cooperation with other public bodies, enforce the law and assess the economic impact of counterfeiting at national level.

²¹⁸ According to the 2014 data, the unit in charge of investigating criminal infringements of intellectual property rights within the Dubai Police has received more than 250 complaints for trademark infringement. It is worth noting that only registered trademarks are protected by law. However, if the Police or the Public Prosecutor considers that not taking action may be detrimental to the public interest, unregistered trademarks may also be protected from infringements. Further information on the role of the UAE Police for the protection of intellectual property is available at: <http://ip.meyer-reumann.com/ip/IP-Protection/criminal-investigation.asp>

²¹⁹ The Maltese Police has a dedicated Economic Crimes Unit, with the mandate to investigate - among others - crimes against intellectual property rights.

This Unit carries out raids and inspections to curb intellectual property rights infringements, especially in open markets and retail outlets. Further information is available at: <http://www.police.gov.mt/en-us/economiccrimesunit.aspx>.

²²⁰ Within the Directorate General of the Slovenian Police, the Financial Crimes Section is responsible for investigating violations of intellectual property rights.

Moreover, the Guardia di Finanza manages an Anti-counterfeiting Information System, which provides information on relevant enforcement actions and enables right holders to cooperate with police forces, by sharing data on products targeted by counterfeiters. The system is also used to convey awareness-raising activities aimed at consumers and at strengthening inter-agency cooperation - including among municipal police forces - as well as public-private collaboration.²²¹

In Greece,²²² Jordan,²²³ Morocco,²²⁴ Slovenia,²²⁵ Serbia²²⁶ and the United Arab Emirates, specialized public agencies are tasked with investigating intellectual property infringements.

For instance, in Slovenia inspectors may access industrial and commercial premises, conduct searches of machinery, products, books, contracts and documents. They can collect samples of goods, obtain copies of documents, verify the installation of licensed software and confiscate counterfeit items. Should evidence of violations arise, inspectors may also impose monetary fines and seize infringing goods.

Noteworthy is also the Romanian law, which attributes to the Public Prosecutor the power of investigation on of intellectual property infringements and has introduced a specialized section - the Prosecutor's Office attached to the High Court of Cassation and Justice (POHCCJ) - to coordinate investigative activities and public initiatives for the protection of intellectual property rights.

The Romanian
Specialized
judicial section

Within the POHCCJ, the Directorate for Investigation on Organized Crime and Terrorism (DIOCT) is responsible for prosecuting criminal conspiracy and terrorism.²²⁷ Headquartered in Bucharest, it has 15 field offices attached to the national Courts of Appeal, as well as 41 offices attached to the Public Prosecutor Office at Courts of First Instance. Pursuant to Article 12 Law 508/2004, the DIOCT mandate include the prosecution of intellectual property infringements carried out by criminal organizations.

²²¹ Further information on the Anti-Counterfeiting Information System is available at: <https://siac.gdf.it/Pagine/default.aspx>

²²² In Greece, the Financial and Economic Crime Unit (SDOE) is a specialized section of the Ministry of Finance, which deals with economic crimes, cases of frauds and large-scale corruption. Article 88 of Law 3842/2010 has introduced a service dedicated to the protection of intellectual property rights within the Financial and Economic Crime Unit, in charge of conducting investigations and imposing administrative fines on offenders.

²²³ In Jordan, the Public Security Directorate (PSD) within the Ministry of Interior prosecutes intellectual property infringements. Since 2008, a dedicated section was established at the PSD Department of Criminal Investigations. Further information is available at: <http://www.psd.gov.jo/index.php/ar/>

²²⁴ The Moroccan Copyright Office (*Bureau Marocain du Droit d'Auteur* - BMDA), within the Ministry of Communications, is the competent authority for the protection of scientific and artistic works. It investigates cases of piracy and seizes infringing goods. The Office may also lodge civil and criminal complaints for copyright protection. See Articles 60.1-60.3 Law 2/2000 on copyright and related rights. Further information on the Moroccan Copyright Office is available at: <http://www.bmdav.org>

²²⁵ The Market Inspectorate of the Republic of Slovenia conducts *ex officio* investigations against criminal copyright infringements.

²²⁶ The Market Inspectorate, within the Ministry of Agriculture and Environmental Protection, is tasked with investigating intellectual property rights infringements.

²²⁷ The Directorate was established by Law 508/2004 on the creation, organization and operation of DIOCT. The text of the law is available at:

<http://www.schengen.mai.gov.ro/English/Documente/Law/Police/Law%20508%20DIICOT.pdf>.

In all the considered EUMED States, the national Customs administrations are in charge of the protection of intellectual property rights. Despite slight differences in the respective mandates enshrined in domestic laws, Customs administrations are key players in the fight against counterfeiting.

Customs
administrations

Concerning EU Member States in general, the Customs role is specified in Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities,²²⁸ which has strengthened the role of Customs Administrations in the identification and destruction of counterfeit products, intended for or in transit through the EU Customs area.²²⁹ As clarified in Recital 10, the Regulation deals exclusively with procedural matters relating to the Customs activities, while criteria for establishing the infringement of intellectual property rights and for criminal prosecution are specified by national laws.

Both EU Member States and non-EU Member States provide that Customs intervention against counterfeiting may take place either *ex officio* or at the right holder's request.²³⁰

Conditions for
intervention

The intervention at the request of the right holder is disciplined by Article 2 Regulation (EU) No. 608/2013, while the *ex officio* action is provided for in Article 18 Regulation (EU) No. 608/2013. Article 2 authorizes intellectual property right holders and licensees to require the seizure of counterfeit products.

EUMED countries which are not members of the EU do not allow Customs administrations to perform the destruction of counterfeit products without a prior judicial authorization. Conversely, Article 23 of Regulation (EU) No. 608/2013 provides that with the approval of intellectual property right holders and of the recipient of such goods - and if the latter does not object within ten days from the notification²³¹ - counterfeit goods can be destroyed by the Customs without prior judicial approval.

Destruction of
counterfeit
goods

Moreover, due to the rise of electronic commerce and the corresponding increase in small consignments, Article 26 introduced a simplified procedure for small deliveries by mail or courier - defined as those that contain three or fewer items, or which have a gross weight of less than 2 kg. Such goods may be destroyed without the consent of the intellectual property

EU provisions on
small
consignments of
counterfeit goods

²²⁸ The full text of the Regulation is available at:

http://eurlex.europa.eu/legalcontent/EN/TXT/uri=uriserv:OJ.L_.2013.181.01.0015.01.ENG

²²⁹ Pursuant to Article 2, the Regulation also applies to trade names, in so far as they are protected as exclusive property rights under national law, topographies of semiconductor products and utility models and devices which are primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of technological measures.

²³⁰ The mandate of the Egyptian Customs Administration is specified in Articles 27-38 of the Executive Regulation 770/2005, related to the Import and Export Law, as well as Article 51 Customs Law. For Jordan, see Article 13 paragraphs A-D of Law 16/2000. For Lebanon, see Articles 63-66, Article 140 paragraph 3 the Customs Law, as well as Article 91 of the Law on the protection of literary and artistic property. For Morocco, see Laws 17-97/2000 and 2/2000, as implemented by Circular 4994-410/2006. For Serbia, see Articles 281-282 Customs Law. In Tunisia, Article 56 Law 36/2001 enables trademark owners to request seizure of goods bearing a counterfeit trademark. According to Article 62 Law 36/2001, Customs officials can seize *ex officio* counterfeit goods. Articles 91 and 97 of Law 84/2000 allow confiscation at the border of products infringing the exclusive rights of a patent holder. Within Law 33/2009, Articles 50a and 50b mandate the seizure of pirated goods. For Turkey, see Article 57 of Law 4458/1999. As regards the United Arab Emirates, see the Common Customs Law of the Council of Cooperation of the Gulf States, Federal law 7/2002 on copyright and related rights, as well as Federal Law 4/1979 on prevention of commercial fraud.

²³¹ The term is reduced to three days in the case of perishable goods.

right holder, provided that the latter has previously accepted the application of this procedure by the Customs Administration. Customs officers will thus notify the recipient that counterfeit goods will be destroyed, even without involving the intellectual property right holder.

In Egypt, the *ex officio* intervention is restricted, as it requires the written approval of the Director of the concerned Customs office.

In Tunisia, the seizure of counterfeit goods is revoked if the intellectual property right holder fails to bring a civil or criminal action against the infringement within ten days from the notification, as well as to apply for precautionary measures.²³²

Also Turkish law requires the legitimate right holder to inform the Customs on the filing of a complaint within ten days from the notification of the seizure.

With reference to the agro-food sector, as anticipated in the previous section, the legal framework in EUMED countries focuses primarily on consumer and public health protection. Risks are therefore assessed through scientific methods, taking into account the related economic and social aspects (*risk assessment*). The competent authorities use risk assessment to determine appropriate responses (*risk management*). Both risks and measures must then be communicated to the public in a clear, transparent and easily understandable manner (*risk communication*).

EUMED countries have adopted different national solutions to allocate the tasks of risk assessment, management and communication. In 12 States, in particular Bulgaria, Croatia, France, Greece, Jordan, Malta, Morocco, Portugal, Romania, Slovenia, Spain and Tunisia, responsibilities are attributed to a single Food Safety Agency, public or semi-public, in charge of coordinating all the initiatives related to official controls.²³³ Although the respective powers may vary according to national legislation, these agencies aim to ensure consumers and public health protection, the implementation of food safety controls, the prevention of fraud and to strengthen public information.

Seven EUMED countries have assigned these responsibilities to different institutions at national, regional and local level. In particular, Algeria,²³⁴ Egypt,²³⁵ Serbia²³⁶ and Turkey²³⁷ have tasked

The role of Customs in non-EU countries: Egypt, Tunisia and Turkey

Authorities for the protection of the agro-food sector

Specialized Food Safety Agencies

Institutions in charge of ensuring food safety

²³² See Article 60 Law 36/2001, Article 95 of Law 84/2000 and Article 50 d Law 33/2009.

²³³ Reference is made to the following public bodies: Bulgarian Food Safety Agency (BFSA), Croatian Food Agency (CFA), French Agency for Food, Environmental and Occupational Health & Safety (ANSES), Hellenic Food Authority (EFET), Jordan Food & Drug Administration (JFDA), Food Safety Commission of Malta, Moroccan National Office of Food Safety (ONSSA), Portuguese Economy and Food Safety Authority (ASAE), the National Sanitary Veterinary and Food Safety Authority of Romania (ANSVSA), Administration of the Republic of Slovenia for Food Safety, Veterinary Sector and Plant Protection (AFSVSPP), Agency for Consumer Affairs, Food Safety and Nutrition of Spain (AECOSAN), National Agency for Sanitary and Environmental Product Control of Tunisia (ANCSEP).

²³⁴ In Algeria, the above tasks are performed by the Directorate General for Economic Control and Prevention of Frauds (*Direction Générale du Contrôle économique et de la répression des Fraudes* - DGCERF) within the Ministry of Commerce. At regional and local level, the DGCERF relies on nine regional directorates for trade. The Algerian Ministry of Agriculture enforces hygiene requirements and phyto-sanitary controls. Further information on the structure of the Algerian Ministry of Commerce, is available at: http://ftp.fao.org/codex/meetings/ccnea/ccnea7/ne07_09e.pdf.

²³⁵ Egyptian Law 10/1966 mandated the Department for food control within the Ministry of Health and Population to conduct inspections at industrial and commercial premises of food business operators. Moreover, the Ministry is responsible for issuing health certificates and collect samples for microbiological tests. The Central Administration for Plant Quarantine (CAPQ), within the Ministry of Agriculture and Land Reclamation, performs controls on plant health,

specific departments within the competent Ministries to carry out hygiene and safety controls for food, veterinary and phyto-sanitary products at all stages of processing, distribution and placing on the market. The Algerian, Italian and Turkish authorities are also in charge of elaborating guidelines on quality control and fraud prevention; while this role is conferred to the Egyptian Organization for Standardization and Quality in Egypt.²³⁸

With reference to Italy, the implementation of food safety standards is entrusted both to Ministries and to regional legislative and administrative bodies. The majority of tasks related to food and feed safety, animal health and welfare are conferred to the Department of Veterinary Public Health and Food Safety, as well as to the Ministry of Health Offices. The Ministry of Agriculture, Food and Forestry is in charge of plant health and of inspecting quality, labeling and traceability of food and feed; it also supervises the safety of plant protection products and fertilizers. Public health attributions are also conferred to two services within the Prevention Department at the Local Sanitary Services (AUSL): the Food Hygiene and Nutrition Service and the Local Veterinary Services (LVSs).

The Italian case:
competent
Ministries

A dedicated section within the Carabinieri, the *Comando Carabinieri per la Tutela della Salute* (CCTS), has the mandate to investigate food fraud, along with trafficking of pharmaceutical products.²³⁹ Inspections can be conducted *ex officio* or upon request of the Ministry of Health, through sanitary controls of industrial and commercial premises, verification of internal control systems, samples collection and documents acquisition.

The role of
CCTS

In the performance of official duties, CCTS staff acts as health inspector and has judicial police attributions. The work of CCTS was acknowledged in Report 2013/2091 of the European Parliament on food fraud and was indicated as a model for EU Member States.²⁴⁰

Significant is also the work of the Italian State Forestry Corps, which supervises the agro-food sector since the late 70s and is currently undergoing reform in accordance with Law 124/2015, on restructuring public administration.²⁴¹ Its activities, aimed at ensuring compliance with food and consumer safety requirements, have expanded over the years, to include further areas -

The State
Forestry Corps

issues relevant certificates and ensures inspections on import-export of seeds and agricultural raw materials. Its competences are described in Ministerial Decree 3007/2001 of the Ministry of Agriculture and Land Reclamation, available (only in Arabic) at: <http://faolex.fao.org>.

²³⁶ In Serbia, food safety competences are shared between the Ministry of Health and Ministry of Agriculture. The first is mainly responsible for conducting inspections on novel foods, additives, flavorings, and the integrity of public water supply; the second is tasked with ensuring food safety during the primary production, processing, transportation, imports and exports. The controls on foodstuffs at retail level are entrusted to the Market Inspectorate within the Serbian Ministry of Commerce. Further information is available at: <http://www.eko.minpolj.gov.rs/en/>

²³⁷ The General Directorate of Food and Control (GDFC), within the Ministry of Food, Agriculture and Livestock is the main competent authority to ensure safety of foodstuffs and feed, veterinary and phyto-sanitary issues. The GDFC also serves as a point of contact for international organizations.

²³⁸ The Egyptian Organization for Standards & Quality manages relations with international standardization bodies, such as CODEX and ISO. It approves hygiene standards (standard ES 3586/2006), as well as Food safety management systems - Requirements for any organization in the food chain (standard ES 4884/2008). Further information is available at: <http://www.eos.org.eg>

²³⁹ Based at the Ministry of Health in Rome, the Unit has three offices in Milan, Rome and Naples and 38 territorial surveillance units at national level.

²⁴⁰ European Parliament, Committee on the Environment, Public Health and Food Safety, Report on the food crisis, fraud in the food chain and the control thereof (2013/2091 (INI)), 4 December 2013.

²⁴¹ The text of Law 124/2015 is available at: <http://www.gazzettaufficiale.it/eli/id/2015/08/13/15G00138/sg>

such as animal husbandry, dairy products, olive oil, wine, GMOs, pesticides, contaminants and certified quality products. The action of the Corps has been strengthened since 2001, with the establishment of *Agro-food and Forestry Division* (NAF) at the General Inspectorate of the State Forestry Corps, which is in charge of coordinating investigations and undertaking analysis related to food safety.

Currently, Lebanon and the United Arab Emirates have neither introduced public bodies with a specific mandate in the area of food safety, nor for the coordination of related activities at national level. However, the food safety draft law in Lebanon provides for an independent agency, with legislative and standard-setting attributions, as well as for coordinating the activities of the different relevant ministries in charge of food safety controls.²⁴²

**Lebanon:
perspectives of
reform**

In the UAE, such an Agency has been introduced in Abu Dhabi, where the Food Control Authority is in charge of ensuring the integrity of foodstuffs intended for human consumption and for conducting relevant studies and research.²⁴³ On a national scale, the Health Department has the mandate to implement federal rules on food safety, to be applied both on domestic and imported products, through a Section for food safety controls operating in each of the eight Emirates.

**UAE: the
experience of
Abu Dhabi**

As for EUMED countries which are members of the EU, it is worth mentioning that the tasks of risk assessment, management and communication are centralized at European level. While risk assessment is conferred to the European Food Safety Authority (EFSA), the subsequent management - being a task of a political nature - is entrusted to the European Commission and to the EU Council. Risk communication is finally shared between the bodies responsible for risk assessment and management.²⁴⁴

**Food safety
competences
in the EU**

The EFSA was established in 2002, following food safety scandals occurred in the 90s, as an independent agency and scientific excellence center on risk assessment, in all stages of the food supply chain. The creation of EFSA was part of a broader program aimed at improving food safety in the EU, ensure a high level of protection for consumers and strengthen confidence in the food industry supply chain in the Union.²⁴⁵

**The European
Food Safety
Authority (EFSA)**

²⁴² El-Jardali F, R Hammoud, Kamleh, R., Jurdi, M., Knowledge to Policy Center (K2P), K2P Briefing Note: Protecting Consumers in Lebanon: The Need for Effective Food Safety System, Beirut, Lebanon (2014), pp. 7 et seq.

²⁴³ Established by Decree-Law no. 2 March 2005 of Sheikh Khalifa Bin Zayed Al Nahyan, President of the UAE, as amended by Law 5/2007. Further information is available at: <http://www.adfca.ae/English/AboutADFCA/Pages/default.aspx#sthash.cco3e4GH.dpuf>

The authority is also responsible for ensuring compliance of food business operators with relevant legal requirements and must report violations to the competent judicial authorities. According to Articles 14-15 Emirate of Abu Dhabi Food Law 2/2008, the agency can inspect industrial and commercial premises for food processing and request clarifications on possible cases of non-compliance.

²⁴⁴ See Federal Institute for Risk Assessment (BfR), EU Food Safety Almanac, third edition, Berlin, Germany (2014), pp 8 et seq.

²⁴⁵ EFSA is an independent European agency based in Parma (Italy), funded by the EU budget. The agency operates separately from - but in cooperation with - the European Commission, European Parliament and EU Member States. Its mandate is established in Regulation (EC) No. 178/2002. Further information is available at: <http://www.efsa.europa.eu>.

EFSA's mandate includes the safety of foodstuffs intended for human consumption and animal feed, as well as animal and plant health protection. The authority also carries out an environmental risk assessment of genetically modified organisms, feed additives and pesticides. EFSA provides scientific advice and deals with the communication of current and emerging risks, in order to support the elaboration of EU policy and legislation.

Finally, EFSA is part of a network including relevant national authorities, and ensures coordination between the national and European level, as well as among the domestic authorities in charge of food safety. Of great importance in the domain of food safety in Europe is the Food and Veterinary Office (FVO) of the European Commission.²⁴⁶ The Office assesses compliance with European legislation on food safety, animal and plant health in the EU Member States and non-member countries exporting food products to the EU.

The Food and
Veterinary
Office (FVO)

The FVO performs inspections in cooperation with the competent national authorities,²⁴⁷ resulting in reports which offer strategic recommendations. Should controls expose serious misconducts, the European Commission, with the agreement of the Member States, may restrict or even prohibit trade in specific products or livestock.

In addition to reporting duties, the FVO produces general and regional recommendations, implemented through a dialogue with relevant stakeholders and may provide consultancy on the elaboration of food law.

²⁴⁶ The UAV, which is based in Grange (Ireland), was established by Regulation (EC) No 882/2004. Further information is available at: <http://ec.europa.eu/food/fvo>.

²⁴⁷ The team in charge of inspections is usually made up of two UAV staff, supported by an expert from the examined Member State. The team usually visits the laboratories of the national authorities responsible for food safety, including at regional and local level, as well as for controls at industrial and commercial premises engaged in foodstuffs production, transformation and sale. The collected data lay the ground for a report presented to the national authorities.

7. Actions and operations: case studies

At the outset, it should be noted that Report 2013/2091 of the European Parliament has specified several challenges related to the fight against food fraud. Though such concerns are mainly referred to EU Member States, it is reasonable to assume that they can be applied to all the surveyed countries, as this study has revealed a similar situation throughout the EUMED area.²⁴⁸

One of the most important challenges relates to the fact that operations and checks are mostly conducted on a national scale and the exchange of information for cross-border investigations is still limited: this scenario makes it difficult to outline an overview of the EUMED area. Our research has also revealed the scarcity of available information on operations against food frauds, as national authorities tend to focus controls on food safety and do not prioritize the issue of frauds, often for budget constraints.

Challenges: lack of information and scarce international cooperation

Moreover, Europol has recently identified a rise in fraud and has prospected a further increase, due to the growing involvement of organized crime in this area.²⁴⁹

The need to reinforce controls

This trend reflects, most probably, security loopholes in the food supply chain and supports the need to strengthen controls on counterfeit or poor quality food at international level, in cooperation with law enforcement authorities and business operators.²⁵⁰

In spite of the above reservations, in recent years joint operations have been successfully conducted against food adulteration. However, such interventions are limited in scope and are organized almost once a year “on the spot”. It is difficult to foresee that these will lead to autonomous national replications of operations and are likely not to be followed by further national initiatives.

International operations

Most of the surveyed EUMED countries took part in operations against counterfeiting coordinated by Interpol, Europol, and the World Customs Organization (WCO) or by the European Anti-Fraud Office (OLAF). For example, in 2014, Spain has participated in Operation Replica, a joint action coordinated by OLAF, which also saw the involvement of Interpol, Europol, WCO, as well as of 11 States which are non-members of the EU.²⁵¹

Operation Replica, OLAF (2014)

The operation resulted in the seizure of more than 1,200,000 counterfeit goods and 130,000,000 cigarettes.²⁵²

From November 2015 to February 2016, Bulgaria, Croatia, Egypt, France, Jordan, Italy, Portugal, Romania, Spain and Turkey took part in Operation Opson V, a joint action

Operation OPSON V, Interpol - Europol (2015-2016)

²⁴⁸ See European Parliament, Committee on the Environment, Public Health and Food Safety, Report on the food crisis, fraud in the food chain and the control thereof, (2013/2091(INI)), 4 December 2013.

²⁴⁹ Reference is made to the so-called Operations Opson, conducted annually by Europol and Interpol from 2011, which resulted in steady increases in seizures of hazardous and altered foodstuffs and beverages.

²⁵⁰ *Ibid.*

²⁵¹ Australia, Cambodia, China, Indonesia, Japan, Malaysia, New Zealand, Pakistan, Singapore, Russia, Thailand.

²⁵² Further information about Operation Replica is available at: http://europa.eu/rapid/press-release_IP-14-1094_en.htm.

coordinated by Interpol and Europol, which led to the seizure in 57 countries of more than 10,000 tons of counterfeit or adulterated foodstuffs and beverages (including spirits, chocolate, olives and meat).²⁵³ Inspections carried out by police forces, Customs authorities and national food agencies at shops, markets, airports, ports and industrial areas have unveiled an international trafficking in counterfeit foodstuffs, run by organized criminal networks.

In 2013, Bulgaria, Croatia and Serbia took part in Operation White Mercury, an initiative led by Interpol through a series of interventions in Eastern Europe (Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia).

Operation
White
Mercury,
Interpol (2013)

The action resulted in the seizure of more than 457,000 illicit products, including fake toys, cosmetics, cigarettes, vehicle parts, electronic components and household appliances; 10,000 liters of liquid, and further 60,000 bottles of counterfeit packaging material, for an estimated value of over 1,000,000 US dollars. Subsequent investigations allowed dismantling a network of four companies illegally operating in Bulgaria, Czech Republic and Greece.²⁵⁴

In April 2013, Morocco has participated in Operation Biyela, a joint initiative coordinated by the World Customs Organisation, conducted in 23 African countries. The action included a preliminary training for customs agents, aimed at providing information on the technical characteristics of products most commonly targeted by counterfeiters, as well as on risk analysis strategies. Subsequently, several operations were carried out in the main ports of the involved countries, concluded with the confiscation of more than a billion illegal items by Customs administrations. Pharmaceuticals accounted approximately for 49% of the seized products, while electronic devices and appliances around 40%. Food products accounted for 3%, totalling 31,095,792 items.²⁵⁵

Operation Biyela,
WCO (2013)

Enforcement operations can also target specific merchandise and be promoted by specialized agencies. In 2009, the WHO has conducted a series of combined operations in Port Said, Cairo and the Suez Canal, in collaboration with the International Medical Products Anti-Counterfeiting Taskforce (IMPACT), the Police, the Egyptian Customs administration and private investigators. Six raids led to the seizure of several containers, with hundreds of thousands of counterfeit medicines worth hundreds millions USD, ready to be shipped to the Middle East. The merchandise included consumer goods, drugs intended for patients who underwent organ transplants or suffering from serious diseases - such as cancer, diabetes, heart disease or epilepsy.²⁵⁶

WHO and
counterfeit
medicines (2009)

In June 2010, all EU States, together with 11 foreign countries members of the Union for the Mediterranean (UfM), which also includes Egypt, Jordan, Lebanon, Morocco, Tunisia and Turkey,

Operation
Sirocco, OLAF
(2010)

²⁵³ The first operation Opson against counterfeit and adulterated foodstuffs and beverages was conducted in ten countries in 2011. Further information is available at:

<https://www.europol.europa.eu/content/largest-ever-seizures-fake-foodand-drink-Interpol-Europol-operation>

²⁵⁴ More details are available at: <http://www.interpol.int/News-and-media/News/2013/PR158>

²⁵⁵ Further information on Operation Biyela is available at:

<http://www.wcoomd.org/en/media/newsroom/2013/june/wco-and-iracm.aspx>

²⁵⁶ Further information is available at: <http://www.who.int/bulletin/volumes/88/4/10-020410/en/>

participated in Operation Sirocco, a joint Customs operation coordinated by OLAF.²⁵⁷ The operation targeted containers loaded in China or the United Arab Emirates and intended to countries of the Union for the Mediterranean, and was aimed at identifying shipments of counterfeit or smuggled cigarettes, as well as different counterfeit products.²⁵⁸

Within the EU, OLAF has set up an effective information-exchange mechanism among national customs administrations, which allowed the competent authorities to identify and dismantle such illegal trafficking. For example, in December 2013, the operation Eagle Hunt, conducted by the Spanish customs authorities with the support of OLAF, resulted in the seizure of 348,000 packets of smuggled cigarettes, for a value of 1,400,000 euro, ready to be shipped to Spain by sea.²⁵⁹ A few months later, in March 2014, this system has allowed tracking down a shipment of smuggled cigarettes at the port of Piraeus in Athens. The inspections conducted by the Greek authorities led to the identification and seizure of 1,990 cigarettes packs illegally imported from Malaysia.²⁶⁰

Operations
coordinated by
OLAF (2013-15)

Likewise, thanks to the effective exchange of information between the Croatian authorities and OLAF, on 12 March 2015 Customs officers identified a container with nine million contraband cigarettes in the port of Rijeka.²⁶¹

In addition to the above joint operations, all the surveyed EUMED countries conduct enforcement actions against counterfeiting at national level. According to the most recent statistics published by the EU, operations against counterfeit products carried out at national scale are significantly on the rise in Bulgaria, Croatia, Slovenia and Romania.²⁶²

Actions at
national level

²⁵⁷ Non-EU countries which are member of the Union for the Mediterranean are Albania, Palestine, Montenegro and Syria.

²⁵⁸ Approximately 40 million cigarettes, 1,243 kg of tobacco, 7,038 liters of alcohol and 8 million other counterfeit items, including clothing, shoes, toys and electronics were seized. Further information on Operation Sirocco is available at: http://europa.eu/rapid/press-release_IP-10-1275_en.htm?locale=en.

²⁵⁹ More details on Operation Eagle Hunt are available at:

http://ec.europa.eu/anti_frauds/media-corner/press-releases/pressreleases/2013/20131213_01_en.htm

²⁶⁰ Further information is available at:

http://ec.europa.eu/anti_frauds/media-corner/press-releases/pressreleases/2014/20140313_01_en.htm.

²⁶¹ Further information is available at:

http://ec.europa.eu/anti_frauds/media-corner/press-releases/pressreleases/2015/20150401_01_en.htm.

²⁶² The most significant progress has been registered in Slovenia and Croatia. In 2014 the Slovenian Customs Administration carried out 4,050 operations, identifying 505,975 counterfeit products. On a national scale, these figures represent a 205% increase, compared to 2013, as well a 155% growth in the number of seized articles.

Likewise, anti-counterfeiting inspections in Croatia increased by 194% from 2013 to 2014, with a 107% growth in the number of seized products. See: Annual Report EU customs action for the protection of intellectual property rights (27 October 2015), p. 27, available at:

http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2015_ipr_statistics.pdf.

8. Databases and statistics on counterfeiting and food fraud

The study revealed that there are no currently available regional statistics on the trend and the impact of counterfeiting and food fraud in the EUMED area, despite the benefits that could be created by systematic data collection and sharing of best practices to counter the phenomena.

As for counterfeiting in general, among the surveyed EUMED countries, Italy has designed and implemented a comprehensive intellectual property rights enforcement database.

The IPERICO database, managed by the Directorate-General for the Fight against Counterfeiting at the Ministry of Economic Development collects, harmonizes and aggregates data from - among others - the number of seizures, the amount and type of confiscated products, estimates of their average commercial value and their distribution throughout the country.²⁶³

The Directorate-General for the Fight against Counterfeiting - Italian Patent and Trademark Office has also created a national observatory on counterfeiting, with the aim of quantifying, analyzing and monitoring the phenomenon in all its aspects, also assessing its social, economic and fiscal impact nation-wide.²⁶⁴

The EU Intellectual Property Office (EUIPO) has set up two databases for the fight against counterfeiting, the Enforcement Database (EDB) and the Anti-Counterfeiting Intelligence Support Tool (ACIST).

EDB aims to assist law enforcement officers in the identification of counterfeit products. Intellectual property right holders are required to upload relevant data on the protected products. Records include details on the original packaging, distribution channels and information on legitimate right holders (natural or legal persons). Following the profile creation and data upload, a request for Customs intervention against the shipment of counterfeit products can be lodged. The system provides a direct communication channel between the intellectual property enforcement authorities and legitimate rights holders.

The Anti-Counterfeiting Intelligence Support Tool System (ACIST) offers instead free and publicly accessible information on seizures of counterfeit goods, both at national borders and in the internal market, based on information provided by 28 Member States. Aggregated data is analyzed by the European Observatory on Infringements of Intellectual Property Rights, which

Databases on counterfeiting: the Italian example

Databases on counterfeiting: Enforcement Database (EDB) e Anti-Counterfeiting Intelligence Support Tool (ACIST)

²⁶³ IPERICO (acronym of Intellectual Property - Elaborated Report of the Investigation on Counterfeiting), is a data base of seizures made by the Italian police forces that work to combat counterfeiting under the guidance of the Ministry of Economic Development, Directorate General for Combating Counterfeiting - UIBM, with the support of a pool of experts of the Guardia di Finanza, the Agenzia delle Dogane, and, later, of the Criminal Analysis Service of the Home Office. Further information is available at: <http://www.uibm.gov.it/iperico>.

²⁶⁴ Further information is available at:

<http://www.uibm.gov.it/index.php/lotta-alla-contraffazione/osservatorio-contraffazione>

cooperates with European and national authorities to identify best practices on data collection and processing.²⁶⁵

With specific reference to the agro-food sector - even though it does not constitute a database - it is worth noting that all EU Member States are members of the rapid alert system for the notification of a direct or indirect risk to human health deriving from food or feed (Rapid Alert System for food and Feed - RASFF). This effective tool allows national authorities to exchange information and to promptly identify malicious breaches of food law, so as to take appropriate measures against potential risks.²⁶⁶

Databases on food fraud: the RASFF

The legal basis of the RASFF is Article 50 of Regulation (EC) No. 178/2002, which designs the system as a network including the member States, the European Food Safety Authority and the European Commission - which is also in charge of network management.

If a member has relevant information regarding a serious direct or indirect risk to human health linked to food or feed, it forwards without delay details to the Commission within the framework of the rapid alert system. The latter, in turn, disseminates information among members of the mechanism.

Notifications to the RASFF can refer to food or feed offered for sale in the notifying State, seized at EU external borders or rejected at a border post within the EU. The notifying country is also required to detail the risks identified, along with the provisional risk-mitigation measures adopted. According to the seriousness of cases, the news can be considered by the Commission as an alarm, information or notification of rejection at border posts.²⁶⁷

Building upon the RASFF model and with the aim of strengthening national food safety provisions, some EUMED countries which are not members of the EU - namely Algeria, Serbia and Turkey - have introduced national early warning systems.²⁶⁸ These tools allow notifying the competent authorities of direct or indirect risks associated with food, and possibly to involve third countries and international organizations in order to protect public health. Furthermore, Serbia is committed to joining the RASFF system. To this end, in 2013 a specific White Paper on the creation and organization of an early warning system for the notification of a direct or indirect risk to human health deriving from food or feed was published on Official Gazette 62/13.

The use of early warning systems in non-EU countries

²⁶⁵ Further information on the Anti-Counterfeiting Intelligence Support Tool (ACIST) is available at: <https://www.tmdn.org/enforcementintelligence-webapp/>.

²⁶⁶ Further information on the Rapid Alert System for Food and Feed (RASFF) is available at: http://ec.europa.eu/food/safety/rasff/index_en.htm.

²⁶⁷ Pursuant to the RASFF 2015 Annual Report, in 2015 a total of 3049 notifications were transmitted through the system. 775 were classified as alert, 392 as information for follow-up, 495 as information for attention and 1387 as border rejection notification. These original notifications gave rise to 6204 follow-up notifications, representing an average of two follow-ups per original notification. The overall figures present a 3.4 % decrease in original notifications compared to 2014 and a 5 % increase in follow-up notifications, resulting in an overall increase of 2 %. Further information is available at:

http://ec.europa.eu/food/safety/docs/rasff_annual_report_2015.pdf

²⁶⁸ See Article 25 Turkish Law 5996/2010 on veterinary services, plant health, food and feed; Articles 38-39 Serbian Law on Food Safety, Official Gazette R.S. 41/09.

Algeria and Morocco have not set up a national database on food frauds yet, however Customs authorities provide relevant information through periodic reports, which - although not regularly updated - are freely accessible on the Internet.²⁶⁹

On the contrary, Egypt, UAE, Lebanon, Jordan and Turkey do not currently publish publicly available data on the fight against food fraud.

²⁶⁹ The Algerian National Customs Administration has published a list of major seizures from 1999 to 2012, available at: http://www.elwatan.com/regions/sud/tamanrasset/contrebande-a-tamanrasset-saisiede-13702-tonnes-de-produits-alimentaires-en-2014-26-01-2015-285972_258.php. The Moroccan Customs Authority's Annual Reports are available, until 2013, at: <http://www.douane.gov.ma/web/guest/nos-publications>

9. Challenges

The previous paragraphs have examined the most significant aspects of the legal framework on trademarks, quality schemes, patents, industrial designs and copyright in EUMED countries. As anticipated, all the considered EUMED countries ensure legal protection of intellectual property rights; have introduced specific authorities, along with civil, criminal and administrative remedies to combat counterfeiting, piracy and food fraud.

Despite national peculiarities, the considered countries have adopted a similar or comparable approach regarding the general protection scheme. This alignment may not only result from the accession to different international treaties, but can also be attributed to the adoption of ad hoc bilateral agreements, negotiated on reciprocal terms.²⁷⁰

The alarming rise of counterfeiting, piracy and food fraud, seriously affecting innovation and growth, as well as consumer health and safety, demonstrates inconsistencies in law enforcement.

The current section considers challenges related to the application of the above legal framework, to highlight the main gaps and emphasize elements that may facilitate the implementation of more effective anti-counterfeiting and anti-fraud strategies.

Challenges in
law
enforcement

To this end, interviews were conducted with representatives of the private sector (such as companies, law firms, professional associations) and of public institutions (trademark and patent offices, members of the judiciary), databases and reports from the main actors engaged in the study of intellectual property rights enforcement were consulted (such as the World Economic Forum, WIPO, FAO, WHO, the European Commission, the Bureau of Economic and Business Affairs - US Department of State and the International Intellectual Property Alliance).

In the first place, it has emerged that intellectual property rights' registration procedures and the relevant competent authorities are disciplined differently among EUMED countries. Difficulties may therefore arise especially for private operators, who not only are forced to gather costly country-specific information, but also need country-specific technical assistance. These burdens may prove disproportionate and ultimately force small and medium-sized enterprises to forgo the entitlement to intellectual property rights.²⁷¹ Moreover, in EUMED North African countries, legal professionals have raised concerns on shortcomings in registration systems, which cause delays and backlog in processing applications.²⁷²

Registration
procedures

²⁷⁰ This is the case, for example, of Serbia.

²⁷¹ B. Ubertazzi, E. Muñoz Espada, *Le indicazioni di qualità degli alimenti: diritto internazionale ed europeo*, Giuffrè (2009), p. 58.

²⁷² Further information is available at:

<http://www.reuters.com/article/us-africa-investment-idUSKBN0FM0HQ20140717>

Equally significant in EUMED North African countries is the issue of registration costs of intellectual property rights, with fees for trademarks ranging from 1,000 to 1,500 euro, and from 1,200 to 1,700 euro for patents.²⁷³

The costs of IPR registration

WIPO data also reveal that during 2014 only 45 applications for international registrations were filed from Morocco and 48 from Egypt through the system established by the Patent Cooperation Treaty (PCT). Moreover, the majority of registration requests are from foreign nationals.²⁷⁴

With particular reference to trademark registration, right holders have voiced concerns on the issue of bad faith applications in Egypt.²⁷⁵ This problem has been faced in Turkey with a legal reform protecting the legitimate trademark owner, even if the sign is not registered, in respect of any claims from third parties who have registered or plan to register a similar sign in bad faith. The new law also mandates the rejection of new applications which are similar to previously rejected requests.²⁷⁶

Bad faith trademark applications

Another critical element which emerged during the interviews with the private sector is the treatment of foreign goods protected by intellectual property rights, in particular by copyright. In Turkey, for instance, collective management of rights is still problematic, particularly with the treatment of foreign producers, as much as on public performance rights and the licensing of reproduction rights;²⁷⁷ while in Egypt the market entry barriers - including ad valorem tariffs imported merchandise and CDs, censorship taxes and 20% entertainment tax on foreign films (compared with 5% for the Arabic-language films) - still represent obstacles for companies wishing to sell protected works in the country.²⁷⁸

The different treatment of foreign goods

As regards border measures, Customs administrations are at the forefront of intellectual property rights protection. Their action is reported to be effective in many of the surveyed States, yet it suffers from some limitations and lack of resources: it is the case, for instance, of Algeria and Turkey, where the number of counterfeit products on the domestic market is still significant.²⁷⁹ The same applies to Lebanon, where the private sector considers that *ex officio* inspections are effective only in cases of large-scale violations or affecting well-known trademarks.²⁸⁰

The role of Customs Administrations

²⁷³ Data obtained from a major law firm operating in the North African area.

²⁷⁴ See WIPO, PCT Yearly Review: The International Patent System (2015), available at: http://www.wipo.int/edocs/pubdocs/en/wipo_pub_901_2015.pdf

²⁷⁵ See Ambassador Michael B.G. Froman, United States Trade Representative, 2015 Special 301 Report, available at: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

²⁷⁶ See EU Turkey's 2014 Progress Report, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progressreport_en.pdf.

²⁷⁷ European Commission's Turkey 2015 Progress Report, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf

²⁷⁸ See Ambassador Michael B.G. Froman, United States Trade Representative, 2015 Special 301 Report, available at: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

²⁷⁹ See US Department of State, Bureau of Economic and Business Affairs, 2014 Investment Climate Statement, available at: <http://www.state.gov/e/eb/rls/othr/ics/2014/228705.htm> (2014)

²⁸⁰ Data obtained from interviews carried out by UNICRI with representatives of the private sector.

With reference to Customs controls, worth mentioning is that provisions on the inspection and seizure of counterfeit goods in transit on the national territory are not widespread - as provided instead by Moroccan law. Furthermore, the Greek law does not set limitations on the amount and terms for the storage of goods seized at ports prior to destruction. This is problematic as Law 4155/2013 establishes that the costs of storage and destruction of counterfeit goods must be borne by the legitimate trademark owner: business operators thus advocate the preservation of a sample of the seized goods in order to reduce costs.²⁸¹ The issue of storage and destruction costs of counterfeit products, along with Court fees, has also been raised by the private sector in Serbia and Egypt.²⁸²

The costs of storage and destruction of counterfeit goods

As regards Romania, survey participants point out gaps in information sharing among intellectual property right holders and the Customs administration on the disposal of counterfeit goods.²⁸³

In Portugal, the destruction of counterfeit goods at the border has been described as an efficient remedy for legitimate holders in terms of cost / benefit ratio. In fact, despite bearing related costs, the procedure provided for in Regulation (EU) No. 608/2013 allows a rapid response, since no prior judicial authorization is required, thus allowing a fast destruction of counterfeit products, which are prevented from entering the national territory.²⁸⁴ In Morocco, *ex officio* Customs interventions must be followed by the filing of an interim injunction or a complaint. Despite this requirement, Customs procedures are perceived as effective by right holders, as it is the cooperation with the Customs authorities, in particular for cases of trademark infringement.²⁸⁵

The judicial approval for the destruction of counterfeit goods

In Turkey, worth mentioning are the limits to the cooperation between intellectual property rights holders and the customs authorities, which cannot inspect consistently suspect shipments, because of the limited availability of human and financial resources, irrespective of a right holder's request.²⁸⁶ With reference to Police investigations in Turkey, introducing *ex officio* prosecution rather than complaint-based raids would contribute to improve intellectual property protection.²⁸⁷

It was also noted that some EUMED countries have set up specialized units in the fight against counterfeiting or food fraud.

Specialized Police units

The effectiveness of such initiatives, however, may be jeopardized by the absence of specialized Courts, which are not currently available in all EUMED countries.

²⁸¹ See Ambassador Michael B.G. Froman, United States Trade Representative, 2015 Special 301 Report, available at: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>

²⁸² Data obtained from interviews conducted by UNICRI with representatives of specialized law firms.

²⁸³ Data obtained from interviews conducted by UNICRI with a member of the Romanian judiciary.

²⁸⁴ Response of a food business operator to UNICRI *IPR Enforcement Survey*.

²⁸⁵ World Trademark Review, Anti-counterfeiting - A Global Guide. Morocco, available at: <http://www.worldtrademarkreview.com/Intelligence/AntiCounterfeiting/2011/Countrychapters/Morocco>

²⁸⁶ The data were obtained from interviews carried out with representatives of the private sector.

²⁸⁷ See Ambassador Michael B.G. Froman, United States Trade Representative, 2015 Special 301 Report, available at: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

Furthermore, some EUMED States have not even introduced specialized law enforcement departments. In Egypt, for instance, the police has a dedicated phone number to report copyright violations and cybercrimes. However, lacking a specific training, the identification of such crimes remains complex and only the most serious violations can be prosecuted.²⁸⁸ Concerns on the limited scope of investigations are also raised by the private sector in Romania, pointing out that the police rarely extends operations beyond the single reported case, even if counterfeit goods are allegedly produced on a commercial scale or if the involvement of organized criminal groups is plausible.²⁸⁹

This study found that the pursuit of food fraud has not been considered a priority so far in the EUMED area. Criminal investigations on food fraud, adulteration and violations of quality schemes for foodstuffs are in fact rare, although different sources demonstrate a growing involvement of organized crime in these areas.

The need to strengthen investigations on food fraud

A problem affecting several of the surveyed countries - including Romania, Serbia, Spain and Turkey - is the lack of an administrative authority in charge of receiving complaints and dealing with intellectual property rights violations. In Egypt, Article 69 of the new Constitution, which came into force in January 2014, reaffirms the State's commitment to the protection of intellectual property rights. It also calls for the establishment of a specific administrative body, but the government has not taken action yet.²⁹⁰ Also in Lebanon no administrative entity can be contacted directly to address infringements, but right holders must address the Ministry of Commerce.

Administrative authorities against counterfeiting

With specific reference to the agro-food sector, twelve EUMED countries have set up a food safety authority, coordinating the system of official controls. In particular, the authorities have - among other duties - the responsibility to ensure consumer and health protection, the implementation of safety and quality controls, fraud prevention; while also providing a scientific advisory role to the legislature.²⁹¹ Countries which confer these missions to different institutions operating at national, regional and local level may benefit from the creation of a comparable single authority, in order to centralize the responsibility for food safety, avoid duplication, facilitate the coordination of activities and ensure a rapid response in case of need. Concerning civil and criminal remedies for intellectual property rights infringements, the report has identified a number of challenges.

Food safety authorities

First, the issue of capacity building to effectively address counterfeiting and piracy has emerged as critical for the judiciary in North Africa. In Morocco, for instance, specialization

Competences and specialization of Courts

²⁸⁸ See International Intellectual Property Alliance (IIPA), Egypt - 2013 Special 301 Report on Copyright protection and enforcement, available at: <http://www.iipa.com/rbc/2013/2013SPEC301EGYPT.PDF>.

²⁸⁹ See Ambassador Michael B.G. Froman, United States Trade Representative, 2015 Special 301 Report, available at: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

²⁹⁰ See US Department of State, Bureau of Economic and Business Affairs, 2015 Egypt Investment Climate Statement, available at: <http://www.state.gov/documents/organization/241756.pdf>.

²⁹¹ The concerned States are Bulgaria, Croatia, France, Greece, Jordan, Malta, Morocco, Portugal, Romania, Slovenia, Spain and Tunisia.

and independence of the Courts should be strengthened, in order to ensure legal certainty.²⁹² In Algeria, the complex legal system based on French law and the Sharia may raise concerns in terms of enforcement and effectiveness.²⁹³

In Egypt, business operators report technical and procedural obstacles in order to start legal proceedings, to identify offenders and obtain thorough investigations.²⁹⁴ Furthermore, the length of judicial proceedings represents a serious problem.²⁹⁵ However, the creation of the Economic Court in 2008, which has jurisdiction on intellectual property rights infringements, has positively influenced the development of case law, as disputes are decided by specialized judges and electronic evidence is allowed as well (e.g. email address, IP addresses and IP address of a website). Yet some critical issues remain, such as poor deterrence of the penalties and inconsistencies in the enforcement of verdicts.²⁹⁶

In Turkey, 25 specialized intellectual property Courts operate on a national scale. However, the EU 2015 Turkey Report highlights that judges often tend to resort to technical consultants, whose evaluation lays the ground for the judgment. The professionalism and impartiality of such experts, however, should be strengthened, especially in patent-related cases, through minimum experience and professional liability requirements. Due to the reported inefficiencies in the advisory systems, rules are in fact interpreted restrictively and right holders rarely obtain an adequate judicial review.²⁹⁷

Even in countries which have set up a special judicial authority for intellectual property rights infringements, as Romania, budget constraints result in targeting efforts only against the most serious violations. In addition, public prosecution resulted in the indictment of a few of the alleged offenses on a national scale. In 2014, for instance, only 60 out of 7,310 cases were indicted.²⁹⁸

Specialized
Court in
Romania

Moreover, the transfer of copyright jurisdiction from the tribunal Courts to first-instance, or lower level Courts, decided in 2010, has had a negative effect on enforcement, and has made training and capacity building for prosecutors and judges more difficult.²⁹⁹

²⁹² *Ibid.*

²⁹³ See UK Foreign & Commonwealth Office, Overseas Business Risk - Algeria, (2015) available at: [https://www.gov.uk/government/publications/overseasbusiness-risk-algeria/overseas-business-risk-algeria#intellectual-property\(2015\)](https://www.gov.uk/government/publications/overseasbusiness-risk-algeria/overseas-business-risk-algeria#intellectual-property(2015))

²⁹⁴ Data obtained from interviews carried out by UNICRI with representatives of the private sector.

²⁹⁵ See European Commission, DG Trade "Egypt: IPR Enforcement Report - Europe", available at: http://trade.ec.europa.eu/doclib/docs/2009/june/tradoc_143738.pdf

²⁹⁶ See International Intellectual Property Institute (IIPi), United States Patents and Trademarks Office (USPTO), Study on Specialized Intellectual Property Courts, available at: <http://iipi.org/wp-content/uploads/2012/05/Study-on-Specialized-IPR-Courts.pdf>

²⁹⁷ Further information is available at:

http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_turkey.pdf

²⁹⁸ See Ambassador Michael B.G. Froman, United States Trade Representative, 2015 Special 301 Report, pag. 65, available at: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

²⁹⁹ The transfer of copyright jurisdiction, which occurred in 2010, from 42 Tribunals to 188 first-instance Courts on a national scale, resulted in the fragmentation of case law, according to the United States Trade Representative, 2015 Special 301 Report, available at: <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

An additional challenge is represented by the slowness of justice: in Italy, for example, proceedings may last more than five years in first instance for complex cases, requiring the appointment of technical consultants, to which are added two years for the appeal.³⁰⁰

Slowness of justice

The slowness of justice is considered one of the critical issues also by the private sector in Spain, Greece and Portugal. Yet as regards Portugal, it is worth mentioning that Courts ensure timely decision on requests for interim injunctions: in fact, if the judge deems it unnecessary to audition the defendant, an injunction may be issued within a week. However, the administrative authority in charge of seizing counterfeit goods (the ASAE), especially in Lisbon, may delay the implementation of the measure from eight months to one year.³⁰¹

A significant problem in the fight against counterfeiting is the adequacy of penalties. All the surveyed private sector representatives reported that convictions generally lack deterrence. In Egypt, Greece, Lebanon, Morocco, Portugal, Serbia and Turkey prison terms are rarely inflicted, although provided by law.³⁰² In Portugal, deterrent monetary sanctions (the maximum amount is 30,000 euro), can only be applied if the right holder is able to prove the intent or gross negligence of the defendant.

Deterrence of criminal sanctions

Deterrent sanctions are of great importance as counterfeiting, food fraud and violations of quality schemes are profitable illegal activities attracting the interest of organized crime. Lenient penalties may explain the growing interest of criminal organizations towards these activities, in particular concerning the agro-food sector. Beside the deterrence of criminal penalties, all respondents indicated as a critical point the adequacy of damages awarded by civil Courts to legitimate rights holders in cases of counterfeiting. In Lebanon, for example, no specific rule is reported to be in force to quantify monetary compensation and, in general, the awarded amounts are relatively low; the same applies to Turkey, where damages are usually not proportionate to unduly acquired profits. In Portugal, it is worth mentioning that recent case law has shown a more objective approach with respect to damages award. The Courts tend to provide for an amount equal to the license fee usually requested by the right holder in commercial operations.

Award of damages

In the Iberian Peninsula, as well as in Greece and Lebanon, respondents have also stressed difficulties in enforcing damages award: in Spain cases of insolvency are frequent due to the cessation of activity, run-off management or bankruptcy of convicted companies after the issuance of the verdict. In North Africa, but also in Serbia, Lebanon and Turkey, scarce consumer awareness on food fraud, counterfeiting and violations of quality schemes is a significant challenge. Respondents emphasize the need to strengthen coordination, information sharing and cooperation to counter such crimes. In Egypt, for instance, public awareness is considered one of the most important factors in the fight against intellectual property rights

³⁰⁰ Further information is available at: <http://www.diritto.it/archivio/1/20354.pdf>.

³⁰¹ Response of a food business operator to UNICRI IPR Enforcement Survey.

³⁰² Response of private sector representatives to UNICRI IPR Enforcement Survey.

infringements. To this end, extensive public awareness campaigns through different communication channels, targeting national companies and universities have been proposed as an appropriate strategy in order to train and educate civil society, economic actors and university students.³⁰³

³⁰³ See US-Egypt Business Council, “Intellectual Property Rights in Egypt”, USEBC White Paper, available at: <http://www.usegyptcouncil.org/wpcontent/uploads/2010/08/USEBC-Intellectual-Property-White-Paper-Oct-15.pdf>.

Conclusions and recommendations

The previous comparative analysis provided an overview of legal remedies currently in force in the 19 surveyed EUMED countries to combat counterfeiting and food fraud.

In summarizing the main findings of this work it is important to focus on specific elements which can foster the development of more effective anti-counterfeiting and anti-fraud strategies. As the integrity of foodstuffs is fundamental to ensure consumer health and safety, we indicate necessary steps to improve the coordination and effectiveness of the legal response. In this perspective, the following section illustrates the main findings of the study and provides recommendations to improve the current framework.

1) All EUMED countries have introduced quality schemes for the protection of foodstuffs, agricultural goods, and in some cases for wines (including flavored) and spirits (such as, for example, in the EU and in other Balkan countries). Such schemes are based on the reputation of traditional products and are a fundamental tool for manufacturers' and consumers' protection, which can thus choose a specific food according to the manufacturing methods and to its exclusive organoleptic characteristics.

Nevertheless, national laws disciplining the agro-food sector in EUMED countries display significant differences. Even within the EU, the implementation of the rules on quality schemes gave rise to inconsistencies among Member States, especially with reference to the enforcement side.³⁰⁴

Moreover, the EUMED area includes countries which are neither member of the EU nor of the WTO - and have not ratified the TRIPS Agreement - thus complicating a possible harmonization process. Algeria and Tunisia are party to the Lisbon Agreement and therefore have rules on the protection of appellations of origin.

Notwithstanding this, the research has shown that, in most cases, EUMED countries have adopted a similar or comparable approach, especially on legal remedies against violations of appellations of origin and geographical indications, as well as against food fraud. This alignment results from the accession to international treaties and from the adoption of ad hoc bilateral agreements, negotiated on reciprocal terms.³⁰⁵

The general picture, however, is still uneven. Difficulties may therefore arise especially for private operators, who may be forced to gather costly country-specific information, in order to register intellectual property rights or to obtain adequate protection against infringements. These burdens may prove disproportionate and ultimately force small and medium-sized enterprises to forgo the entitlement to intellectual property rights.

³⁰⁴ The French system - for instance - is based on specialized national institutions (INAO). In Italy and Spain the registration is carried out by regional public institutions, whereas in several North-European countries it is ensured by independent certification bodies.

³⁰⁵ This is the case, for example, of Serbia.

For these reasons, it is extremely important to share information among EUMED countries on the procedures to obtain the protection of intellectual property rights and especially of appellations of origin and geographical indications. The exchange of information should also include a list of remedies available in case of violation, as well as information on the procedural steps necessary to seek redress.

Strengthening the cooperation and coordination among National Anti-counterfeiting Committees would facilitate convergence. The exchange of information with the private sector could also be improved through the appointment of national focal points in charge of receiving suggestions from business operators. Such initiatives could also be extended to the surveyed EUMED countries which are not among the signatories of the Rome Declaration.³⁰⁶

2) All the considered EUMED countries have introduced specific rules to protect quality products from counterfeiting and the misleading use of appellations of origin and geographical indications, to the benefit of legitimate producers and consumers. They also provided for comprehensive policies on food safety, in order to counter fraud - including: replacement of essential ingredients with cheaper alternatives, deliberately incorrect or misleading labels or advertisement, sale of food products after expiry date, or sale of products with residues of pesticides or other contaminants, as well as the use of colorings and additives in excess of legal thresholds. Of particular interest in this regard is the EU legal framework, which ensures a high level of food safety.

Despite these initiatives, the fight against food fraud and misuse of quality schemes in EUMED countries may be reinforced, especially in terms of the resources invested to counter different illicit activities, traditionally regarded as serious crimes. Investigations on food fraud, counterfeiting and misuse of quality schemes remain overall limited, although the increasing involvement of organized crime in these areas is established.

The protection of public health and food safety also requires the enforcement of appellations of origin and geographical indications -which should become a priority in EUMED countries. The elaboration and enforcement of policies, laws and control mechanisms against the involvement of organized crime in counterfeiting, food fraud and violations of geographical indications would be of paramount importance, not only for the protection of legitimate manufacturers, but especially considering that illicit conducts in this area often threaten consumers' health and safety.

3) As regards the notion of food fraud, EUMED States have adopted different domestic approaches. Yet the research has revealed that all countries punish the infringement of food safety rules and hygiene requirements along the food supply chain.

³⁰⁶ See note 1.

In particular, in EU member States, conducts which are prosecuted as food fraud at national level share three common elements, namely: (I) the creation of a false belief on the properties of a product; (II) intent, as awareness and willingness to deceive the consumer; (III) a profit-making objective.

Talks among EUMED countries would be needed on the possible adoption of a harmonized definition of "food fraud", starting from the identified shared fundamental principles. Enhancing cooperation among National Anti-counterfeiting Committees may be instrumental to that end. Also in this case, the initiative could be extended to the surveyed EUMED countries which are not signatory parties to the Rome Declaration.

4) Food fraud and misuses of quality schemes are profitable illegal activities that spur the interest of organized crime, just as product counterfeiting. Potential attractiveness is even greater in light of the low rate of civil and criminal prosecution associated to such crimes.

As for the fight against food fraud, this study revealed that adequate sanctions are established through public health protection laws against the circulation of food unfit for human consumption. The legal framework includes, in fact, deterrent prison terms and monetary fines. Conversely, laws applicable to the misuse of quality schemes show a lower level of deterrence. Moreover, in both cases consistency in law enforcement is yet to be reached. This is confirmed by recent studies conducted by Europol, indicating that cases of food fraud are on the rise. Loopholes in law enforcement system may be one of the factors behind the growing interest of organized crime in the agro-food sector.

In order to offset the illicit profit generated through food fraud and the misuse of quality schemes, strengthened sanctions and consistent enforcement thereof would be beneficial in the EUMED area, along with more thorough investigations aimed at identifying the possible involvement of organized crime.

From an economic standpoint, monetary fines should at least exceed the unduly acquired profits; whereas in cases of criminal conspiracy, the confiscation of crime proceeds would increase sanctions' deterrence.

Equally useful would be the introduction of penalties against food business operators convicted for repeated offenses (a viable option is represented, for instance, by the withdrawal of the license), as well as the duty for food business operators to report unlawful conducts they are aware of, so as to unveil possible fraud at an early stage and to contain public health risks.

Finally, talks should be held on minimum deterrence standards and common principles to be applied in cases of food fraud or violations of quality schemes, in particular: a) in case consumers' health and safety are at risk, b) in case of large-scale fraud; c) in cases of criminal conspiracy. In this respect, National Anti-Counterfeiting Committees may

cooperate to facilitate dialogue, also involving EUMED countries which are not among the signatories of the Rome Declaration.

5) Twelve EUMED countries have introduced a food safety authority, as a public body which coordinates the system of official controls. In particular, food safety authorities in EUMED countries ensure: consumer and health protection, the implementation of safety and quality control, fraud prevention, while providing scientific advisory role to the benefit of the legislature. The rest of the surveyed countries have adopted a different approach, entrusting the above responsibilities to different institutions at national, regional and local level.

Considering the importance of the fight against food fraud, EUMED countries may benefit from the creation of a Food Safety Authority, as the only body responsible for the protection of the agro-food sector. This agency would avoid duplication, facilitate the coordination of law enforcement agencies and ensure a rapid response in case of need.

6) This research has found that several national authorities are in charge of the fight against food fraud and violations of quality schemes in EUMED countries. These bodies include: the food safety authority (when present), the Police forces and the Customs, as well as Ministries and bodies responsible for issuing licenses or ensure protection of quality schemes.

In light of the lessons learnt in cases of product counterfeiting, especially as regards medicines, an effective law enforcement strategy requires enhancing cooperation and coordination among relevant stakeholders at national and international level. In particular, a rapid response is required in cases of food fraud, in order to identify the offender and withdraw infringing products from the market. Enhancing communication and cooperation at national level is thus essential to improve the effectiveness and preparedness of national authorities.

In this respect, some elements of the cooperation program developed by the Council of Europe on falsified medicines could also be applied to the agro-food sector. In particular, a key element of this model is the creation of single points of contact (SPOC) within national agencies. Each SPOC is the national reference for cooperation, facilitating communication among all involved parties. Its implementation at national level would allow the creation of a single point of contact within each competent authority, favoring a rapid response in case of need, as well as a better flow of information. As regards the EUMED area, employing SPOCs at the intergovernmental level could result in increased multi-lateral cooperation. To achieve this goal, each State should identify a domestic SPOC, serving as a focal point for requests from other members of the system.

The key role of public-private cooperation, especially at national level, must be acknowledged in order to develop better policies for the protection of quality schemes and the agro-food sector. To this end, opportunities for enhanced cooperation between public authorities and the private sector should be examined through an increased exchange of

information, development and implementation of joint actions, the sharing of good practices and the establishment of scientific cooperation frameworks.

It is important to strengthen cooperation against food fraud and violations of quality schemes both among EUMED countries, and among different domestic public authorities. In particular, the SPOC system devised by the Council of Europe has already proved effective to increase cooperation in the domain of falsified medicines, and could be extended to the agro-food sector, both at national level and in the entire EUMED area. Moreover, cooperation with the private sector should be intensified. To this end, specific working groups may be created to facilitate the elaboration of shared policies for the protection of the agro-food sector.

7) Consumers' awareness on issues such as food fraud, counterfeiting and violations of quality schemes should be improved. In particular, Internet and social media could be used to inform the public and to help consumers make more informed choices. Retailers and suppliers could positively influence the attitude of buyers, providing user-friendly information. The same media may also convey information on suitable actions to address food fraud and may be used to give voice to public concerns on the protection of the agro-food sector, thus providing relevant input to the authorities for the elaboration of effective policies.

Efforts should be focused on increasing consumers' awareness on the necessity to protect the agro-food sector and on the risks related to food fraud.

Internet and social media should be considered as one of the possible means to achieve this goal, as well as to inform consumers on potential threats deriving from illicit conducts and on the adoption of precautionary measures. Of great importance would also be the collection of proposals from consumers. Social media and the Internet could play a key role in this respect.

8) Certain EUMED countries have set up specific police units for the fight against counterfeiting and food fraud. Particularly relevant in the food sector, in Italy, are for instance the Comando Carabinieri Tutela della Salute (CCTS) and the State Forestry Corps, both in charge of conducting relevant investigations. Entrusting investigations to specialized police units may lead to improved effectiveness in law enforcement against such illegal activities.

Building up on the Italian example, the introduction of a specific police force or a dedicated section within the national police forces to counter intellectual property infringements and food fraud, would facilitate the development and implementation of common strategies.

9) Systematic collection of data on food fraud, misuse of quality schemes and intellectual property rights is rarely implemented on a national scale. This hinders research aimed at assessing the impact and evaluating trends of such criminal activities.

There is urgent need to determine the frequency, scale, and the incidence of cases of food fraud, misuse of quality schemes and intellectual property rights infringement in EUMED countries. To that end, further emphasis should be assigned to the collection and publication data on relevant cases, investigations and law enforcement initiatives. The creation of national databases freely available on the Internet would be desirable.

10) Ultimately, the report has shown that the cooperation framework among EUMED countries can be further improved to achieve a higher level of intellectual property rights and quality schemes protection, as well as to the benefit of the whole agro-food sector. The current section has proposed suitable means to strengthen coordination, information sharing and cooperation in the fight against counterfeiting and food fraud.

In this perspective the Rome Declaration must not be considered as a point of arrival, but rather as a springboard to improve the coordination and cooperation framework in this area. Several of the proposed recommendations refer to the need for constructive dialogue among EUMED States, including non-signatory parties to the Rome Declaration. This would be necessary, for instance, if countries decide to adopt minimum common standards for the protection of the agro-food sector, or take joint action to increase the deterrence of their domestic legal frameworks, to combat intellectual property infringements and food fraud. Likewise, area-wide coordination would be essential for the creation of a mechanism inspired by the above mentioned SPOC system; whereas the exchange of best practices could spur the creation of national working groups, aimed at adopting measures for the protection of the food supply chain, drawing upon the contributions of both the public and private sector.

In this context, the Rome Declaration should provide a solid basis to establish a dialogue mechanism among EUMED countries and organize technical meetings - to be convened ad hoc or on a regular basis. UNICRI and EUIPO could facilitate this process, thanks to their experience in coordinating specific working groups, including representatives of governments and the business community. The implementation of a periodic review concerning progress achieved in EUMED area on the protection of intellectual property rights and the agro-food sector should equally be considered. This initiative would allow monitoring legal and law enforcement developments in the area, presenting concrete actions and coordination mechanisms established in EUMED countries.

Summary tables

Table 1: ratification of main international conventions on the protection of intellectual property rights

	Paris Convention for the protection of industrial property	TRIPS Agreement	Patent Cooperation Treaty	Trademark Law Treaty	Lisbon Agreement on the protection of appellations of origin	WIPO Copyright Treaty
Algeria	X		X		X	X
Bulgaria	X	X	X		X	X
Croatia	X	X	X	X		X
Egypt	X	X	X	X		
France	X	X	X	X	X	X
Greece	X	X	X			X
Italy	X	X	X	X	X	X
Jordan	X	X				X
Lebanon	X					
Malta	X	X	X			X
Morocco	X	X	X	X		X
Portugal	X	X	X		X	X
Romania	X	X	X	X		X
Serbia	X		X	X	X	X
Slovenia	X	X	X	X		X
Spain	X	X	X	X		X
Tunisia	X	X	X		X	
Turkey	X	X	X	X		X
United Arab Emirates	X	X	X			

Table 2: administrative and criminal sanctions against intellectual property rights infringements

	Trademarks		Patents		Industrial drawings and designs		Copyright	
	Administrative penalties	Criminal penalties	Administrative penalties	Criminal penalties	Administrative penalties	Criminal penalties	Administrative penalties	Criminal penalties
Algeria		X		X		X		X
Bulgaria	X	X	X	X	X	X	X	X
Croatia	X	X	X	X	X		X	X
Egypt		X		X		X		X
France		X		X		X		X
Greece		X		X		X		X
Italy		X		X		X		X
Jordan		X		X				X
Lebanon		X		X				X
Malta		X		X		X		X
Morocco		X		X		X		X
Portugal		X		X		X		X
Romania		X		X		X		X
Serbia		X		X		X		X
Slovenia		X		X		X		X
Spain		X		X		X		X
Tunisia		X		X		X		X
Turkey		X		X		X		X
United Arab Emirates		X		X		X		X

Table 3: administrative and criminal sanctions against violations of geographical indications and food fraud

	Registered geographical indications		Provisions against food fraud	
	Administrative penalties	Criminal penalties	Administrative penalties	Criminal penalties
Algeria		X	X	X
Bulgaria	X	X	X	X
Croatia	X	X	X	X
Egypt		X	X	X
France		X	X	X
Greece				X
Italy		X	X	X
Jordan		X		X
Lebanon				X
Malta		X	X	X
Morocco		X	X	X
Portugal		X	X	X
Romania		X	X	X
Serbia	X		X	X
Slovenia	X	X	X	X
Spain	X	X	X	X
Tunisia		X	X	X
Turkey		X	X	X
United Arab Emirates				X

Table 4: Authorities in charge of intellectual property rights registration and of the fight against counterfeiting

Intellectual Property Rights - Competent authorities		
	Registration of rights	Fight against counterfeiting
Algeria	X	X
Bulgaria	X	X
Croatia	X	X
Egypt	X	X
France	X	X
Greece	X	X
Italy	X	X
Jordan	X	X
Lebanon	X	X
Malta	X	X
Morocco	X	X
Portugal	X	X
Romania	X	X
Serbia	X	X
Slovenia	X	X
Spain	X	X
Tunisia	X	X
Turkey	X	X
United Arab Emirates	X	X

Table 5: Authorities in charge of the registration and the fight against food fraud

	Geographical Indications and agro-food sector- Competent authority	
	Registration of rights	Fight against food fraud
Algeria	X	X
Bulgaria	X	X
Croatia	X	X
Egypt	X	X
France	X	X
Greece	X	X
Italy	X	X
Jordan	X	X
Lebanon	X	X
Malta	X	X
Morocco	X	X
Portugal	X	X
Romania	X	X
Serbia	X	X
Slovenia	X	X
Spain	X	X
Tunisia	X	X
Turkey	X	X
United Arab Emirates		X

Table 6: Actions and operations against counterfeiting and food fraud at national and international scale

	Fight against counterfeiting		Food safety and food fraud	
	Actions and operations		Actions and operations	
	National scale	International scale	National scale	International scale
Algeria	X		X	
Bulgaria	X	X	X	X
Croatia	X	X	X	X
Egypt	X		X	X
France	X	X	X	X
Greece	X	X	X	X
Italy	X	X	X	X
Jordan	X		X	
Lebanon	X		X	
Malta	X	X	X	
Morocco	X		X	
Portugal	X	X	X	X
Romania	X	X	X	X
Serbia	X	X	X	
Slovenia	X	X	X	
Spain	X	X	X	X
Tunisia	X		X	
Turkey	X	X	X	X
United Arab Emirates	X		X	

Table 7: National and international databases on the fight against counterfeiting and food fraud

	Fight against counterfeiting		Food fraud	
	-		-	
	Databases		Databases	
	National databases	International databases	National databases	International databases
Algeria				
Bulgaria	X	X		X
Croatia	X	X		X
Egypt				
France	X	X		X
Greece	X	X		X
Italy	X	X		X
Jordan				
Lebanon				
Malta	X	X		X
Morocco	X			
Portugal	X	X		X
Romania	X	X		X
Serbia	X	X		X
Slovenia				X
Spain	X	X		X
Tunisia				
Turkey				
United Arab Emirates				

ANNEX: Country dossiers

ALGERIA

Intellectual property rights

Algeria is not a member of the WTO and has not signed the TRIPS Agreement. Nonetheless, it has ratified numerous international conventions on the protection of intellectual property rights, including: the Patent Cooperation Treaty (1970), the WIPO Copyright Treaty (1996), the Lisbon Agreement on the protection of appellations of origin and their international registration (1958).

Domestic legislation on intellectual property rights is contained in Ordinances issued by the executive and subsequently incorporated in legislative acts, reproducing the text of the Ordinances.

The protected rights include:

Geographical indications: Algeria ensures legal protection to appellations of origin, disciplined in Ordinance No. 76-65 of 16 July 1976, which refers to the structure and definitions of the Lisbon Agreement. The registration procedure is specified in Executive Decree No. 76-121 of 16 July 1976.

Trademarks: the exclusive rights of trademark owners are protected by Law No. 03-18 of 4 November 2003, implementing Ordinance No. 03-06 of 19 July 2003. The Act details the registration procedure and recognizes well-known trademarks.

Patents: Patents are regulated by Law No. 03-19 of 4 November 2003, which implements Ordinance No. 03-07 of 19 July 2003 and establishes the registration procedure.

Copyright: copyright and related rights are disciplined by Law No. 03-17 of 4 November 2003, which implements Ordinance No. 03-05 of 19 July 2003. Article 21 recognizes both moral and economic rights to the author of an intellectual work.

Industrial Designs: Law No. 03-20 of 4 November 2003, implementing Ordinance No. 03-08 of July 19, 2003, contains provisions for the protection of industrial designs.

Registration of intellectual property rights

Geographical indications, trademarks, patents and industrial designs must be registered at the Algerian National Institute of Industrial Property (*Institut National Algérien de la propriété Industrielle* - INAPI), part of the Ministry of Industry.

As regards the protection of copyright and related rights, the institution in charge is the National Office of Copyright and Related Rights (*Office National des Droits d'Auteur et des Droits Voisins* - ONDA), within the Ministry of Communication and Culture.

Sanctions regime

The Algerian system establishes legal remedies for the protection of intellectual property right holders. However, the need for stronger public awareness on counterfeiting is widely acknowledged, along with the lack of specialized intellectual property Courts.

Geographical Indication Infringements

Article 30 of Ordinance No. 76-65/1976 provides that counterfeiting of registered appellations of origin is punished with imprisonment up to three years, in addition to a fine from 2,000 to 20,000 dinar (about 17 to 170 euro).

Article 30 letter (b) clarifies that the sale of products bearing a counterfeit appellation of origin is punishable with imprisonment up to one year and a fine ranging from 1,000 to 15,000 dinar (about 10 to 130 euro).

A comparison with the sanctions imposed for violations of other intellectual property rights reveals the limited deterrent effect of these provisions.

Trademark Infringements

According to article 26 of the Ordinance No. 03-06 /2003, violations of the trademark owner's exclusive rights amount to counterfeiting, which in compliance to Article 32 is punishable by imprisonment up to two years, and a monetary fine from 2,500,000 to 10,000,000 dinar (about 21,000 to 86,000 euro). As an additional penalty, the Court may order the revocation of the business license, along with the confiscation of the equipment used to commit the offense and the destruction of counterfeit goods.

Finally, Article 33 of Ordinance No. 03-06/2003 prohibits the intentional sale of goods or services without an identifiable trademark or bearing a non-registered mark, with the only exceptions permitted by Article 3 of the Ordinance. Such conducts are subjected to imprisonment from one month to one year and a fine ranging from 500,000 to 2,000,000 dinar (about 4,050 to 16,200 euro).

Patent Infringements

Article 4 of Ordinance No. 03-07/2003 provides that the manufacture, use, sale, offer for sale and import of an invention relating to a product, the use of an invention relating to a

proceeding; as well as the use, sale, offer for sale and import of products directly obtained from an invention are reserved to the patent holder.

Article 61 of Ordinance No. 03-07/2003 specifies that any third party engaging in such conducts without the authorization of the right holder is liable for counterfeiting, which is punishable by imprisonment from six months to two years and a fine from 2,500,000 to 10,000,000 dinar (about 21,000 to 86,000 euro). The same penalties apply to the storage, sale and offer for sale of counterfeit products.

Industrial Design Infringements

According to Article 23 of Ordinance No. 03-08/2003, infringements of the exclusive rights in the use of industrial designs amount to counterfeiting and are subjected to a fine of from 500 to 15,000 dinar (about 4 to 120 euro). In case of recidivism, or if the offense was committed by an employee of the right holder in the performance of professional duties, the imprisonment sentence may reach six months. Article 23 also clarifies that the penalties may be doubled if the legitimate right holder is a public body.

As an accessory penalty, the Court may order the confiscation of the infringing products and the machinery used to commit the offense, which can be allocated to the plaintiff.

Copyright Infringements

Pursuant to Article 151 of Ordinance No. 03-05/2003 the unauthorized communication to the public, reproduction, import, export and sale of copies of a protected work amount to copyright infringements.

Article 153 of Ordinance No. 03-05/2003 provides that violations of copyright and related rights are punished with imprisonment from six months to three years and a fine from 500,000 to 1,000,000 dinar (about 4,300 to 8,550 euro). The above penalties may be increased up to double in the event of recidivism, as clarified in Article 156.

The Algerian copyright law does not protect the so called "technical protection measures". However, Articles 394 bis - 394 nonies of the Criminal Code forbid the unauthorized access to a computer or telecommunications system, sanctioned with imprisonment from two months to three years, along with a fine from 50,000 to 5,000,000 dinar (about 427 to 42,750 euro).

National Anti-Counterfeiting Authorities

The Algerian Customs Administration (*Direction Générale des Douanes*), within the Ministry of Finance (*Ministère des Finances*) may seize, examine and collect samples of goods suspected of infringing intellectual property rights. Intervention may occur both upon request of the right holder and *ex officio*. Inspectors from the National Office of Copyright and Related Rights (ONDA) are in charge of investigating cases of copyright infringement.

Police officers (*Police Algérienne*) and Inspectors of the Ministry of Commerce are responsible to prevent and repress intellectual property infringements.

Food safety

Competent authorities

Official inspections are conducted by local units of the Ministry of Commerce (*Ministère du Commerce*) and the Ministry of Agriculture (*Ministère de l'Agriculture*).

The Ministry of Commerce, General Directorate for economic control and fraud prevention (*Direction Générale du Contrôle Economique et de la Répression des Fraudes*) establishes guidelines to ensure product safety and fraud prevention.

Police officers (*Police Algérienne*) and Inspectors from the Ministry of Commerce are mandated to investigate food fraud.

Repression of food fraud

The Algerian law disciplines food fraud in Law 09- 03/2009 on consumer protection and fraud prevention.

Pursuant to Articles 70-71 Law 09-03 / 2009, economic operators who do not meet safety requirements of food products or offer for sale toxic products are sanctioned with a fine of 10,000 to 500,000 dinar (about 85 to 4,300 euro).

Article 72 Law 09-03/2009 specifies that infringement of hygienic requirements in industrial and commercial premises where food products are manufactured, processed or sold is subjected to a fine ranging from 50,000 to one million dinar (about 430 to 8,550 euro).

Finally, if the consumption of counterfeit foods results in damage to health for the consumer, the penalties are increased to 2,000,000 dinar (about 17,000 euro). If the death of a person ensues, life imprisonment may be imposed, as explained in Article 83 Law 09-03 / 2009.

Actions and operations at national and international level

Although Algeria has not taken part in operations conducted at the international level, the data provided by the Ministry of Commerce show that in the first nine months of 2015 Customs authorities have seized more than 1,151,000 counterfeit items, compared to 586,750 in 2014. However, the Ministry recognizes that further progress is needed in the efficiency of law enforcement and official controls.

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available. The Algerian Customs provide just a summary table of the type of products seized from 1999 to 2012.

In the domain of food fraud, the Algerian authorities cooperate with the RASFF (Rapid Alert System for Food and Feed), even though Algeria does not officially participate in the system.

BULGARIA

Intellectual property rights

Bulgaria is a member of the EU and of the WTO.

It has ratified several international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Patent Cooperation Treaty (1970), the WIPO Copyright Treaty (1996), the Lisbon Agreement for the protection of appellations of origin and their international registration (1958).

Domestic law on intellectual property rights recognizes:

Geographical indications and trademarks, as per the Law on Trademarks and Geographical Indications, amended in 2011;

Copyright and Related Rights, as per the Law on Copyright and Related Rights, amended in 2011;

Patents and utility models, as per the Law on the registration of patents and utility models, amended in 2012;

Industrial Designs, as per the Industrial Designs Law, amended in 2011.

Registration of intellectual property rights

Geographical indications, trademarks, patents and industrial designs have to be registered with the National Patent Office of the Republic of Bulgaria (*Patentno Vedomstvo na Republika Bulgariya*).

The Directorate of Copyright and Related Rights (*Direktsiya Avtorsko pravo i srodnite mu prava*), within the Ministry of Culture (*Ministerstvo na kulturata*) is the agency in charge of copyright and related rights registration.

Sanctions regime

Geographical Indication Infringements

Bulgarian law provides for administrative and criminal penalties for infringement of registered geographical indications.

According to Article 81 of the Law on Trademarks and Geographical Indications, to which Article 87 refers, natural persons which use for commercial purposes signs identical or similar to geographical indications registered in relation to goods or services, without the authorization of the legitimate right holder, are punished with a fine from 500 to 1,500 lev

(about 250 to 770 euro). Individual entrepreneurs and legal entities are instead subjected to a fine from 1,000 to 3,000 lev (about 500 to 1550 euro).

Pursuant to Article 172b of the Criminal Code, the deliberate counterfeiting of registered geographical indications is punishable by imprisonment up to five years, in addition to a fine of up to 5,000 lev (about 2,550 euro). In case of recidivism, the prison sentence is increased to eight years, supplemented by a fine from 5,000 to 8,000 lev (about 2,550 to 4,100 euro). The competent Court may also order the destruction of counterfeit goods.

Trademark Infringements

The Bulgarian law provides for both administrative and criminal penalties for infringement of registered trademarks. Pursuant to Article 81 of the Law on Trademarks and Geographical Indications, natural persons who use for commercial purposes signs identical or similar to registered trademarks to designate goods or services, without the authorization of the legitimate right holder are punished with an administrative sanction from 500 to 1,500 lev (about 257 to 770 euro). Individual entrepreneurs and legal entities are instead subjected to a fine from 1,000 to 3,000 lev (about 514 to 1550 euro).

Moreover, Article 172b of the Criminal Code provides that intentional trademark infringement is punishable by imprisonment up to five years, in addition to a fine of up to 5,000 lev (about 2,560 euro). In case of recidivism, the prison term is increased to eight years, supplemented by a fine from 5,000 to 8,000 lev (about 2,550 to 4,100 euro). The Court may also order the destruction of counterfeit goods.

Patent Infringements

The Bulgarian law provides for both administrative and criminal sanctions in case of patent infringement.

According to Article 84 of the Law on Registration of patents and utility models, the unlawful disclosure of the essential characteristics of a patent application which is kept secret for national security reasons, or its filing abroad, are punishable by a fine from 1,000 to 20,000 lev (about 510 to 10,300 euro). The false representation of a product as patented, through information affixed directly on the goods, on the packaging, or through references in business correspondence, is subjected instead to a fine from 300 to 500 lev (about 150 to 250 euro).

Furthermore, Article 173 paragraph 2 of the Criminal Code punishes false claims of inventorship by a prison sentence up to two years and a fine ranging from 1,000 to 3,000 lev (about 510 to 1,550 euro). Finally, Article 174 of the Criminal Code prohibits any abuse of an official position aimed at obtaining a patent with imprisonment up to two years and a fine from 100 to 300 lev (about 50 to 150 euro).

Industrial Design Infringements

Bulgarian law provides for both administrative and criminal sanctions for infringements of industrial designs.

According to Article 65 of the Law on Industrial Designs, natural persons responsible for the production, offer for sale, import and storage of products incorporating a protected industrial design, without the authorization of the right holder, are punishable by a fine from 500 to 1,500 lev (about 250 to 770 euro). Individual entrepreneurs and legal entities are instead subjected to a fine from 1,000 to 3,000 lev (about 510 to 1,550 euro).

Moreover, Article 173 paragraph 2 of the Criminal Code provides that the false attribution of industrial designs is punished by imprisonment up to two years and a fine from 1,000 to 3,000 lev (about 510 to 1,550 euro). Finally, Article 174 of the Criminal Code sanctions any abuse of an official position aimed at obtaining the registration of an industrial design with imprisonment up to two years and a fine from 100 to 300 lev (about 50 to 150 euro).

Copyright Infringements

The Bulgarian law provides for both administrative and criminal sanctions in cases of copyright infringements.

According to Article 97 of the Law on copyright and related rights, the reproduction and communication to the public of protected works in violation of copyright or related rights of performers, phonogram producers and broadcasting organizations, are punishable by a fine from 2,000 to 20,000 lev (about 1,050 to 10,300 euro). The same penalty applies to infringement of the exclusive rights of the author of software, as well as the unauthorized dissemination of works protected by means of computer networks.

In addition, Article 172 of the Criminal Code provides that copyright infringements are punished with imprisonment up to five years and a fine of up to 5,000 lev (about 2,560 euro). In case of recidivism, the prison sentence ranges from one to six years, while the monetary fine from 3,000 to 10,000 lev (about 1,500 to 5,100 euro).

Finally, Article 174 of the Criminal Code prohibits false attribution of copyright on a protected work with imprisonment up to two years and a fine from 100 to 300 lev (about 50 to 150 euro).

National Anti-Counterfeiting Authorities

As required by Regulation (EU) No. 608/2013 on the protection of intellectual property rights by Customs authorities, the Bulgarian Customs Administration (*Agentsiya Mitnitsi*), within the Ministry of Finance (*Ministerstvo na finansite*), can seize goods suspected of infringing intellectual property rights, both upon request of the right holder and *ex officio*.

The Directorate for Combating Organized Crime within the Ministry of Interior (*Ministerstvo na vutreshnite raboti*), is mandated to investigate the involvement of criminal organizations in intellectual property violations.

Food safety

Competent authorities

The Bulgarian Food Safety Agency (*Bulgarska Agentsiya bit Bezopasnost na Khranite*) and its 28 Regional Directorates are responsible for conducting official controls for food safety and quality.

The Ministry of Agriculture (*Ministerstvo na zemedeliето*), Directorate for Animal Health and Food Safety, is in charge of ensuring food and feed safety, as well as animal and plant health.

The Ministry of Health (*Ministerstvo na zdraveopazvaneto*) is entrusted with the protection of water safety.

Repression of food fraud

Bulgaria complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 852/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

The Bulgarian Food Law, enacted in 1999 and amended in 2013, and the Laws on Veterinary Activity and on Plant Protection are relevant sources of domestic law.

Bulgarian law provides for two categories of food fraud, as per the Food Law and the Criminal Code and, respectively, punishable by administrative or criminal penalties, based on the gravity of the offense.

The first category is regulated in Chapter VII of the Food Law. In particular, Articles 38-52 prohibit the sale of the so-called novel foods, prior to the approval of the Ministry of Health,

which is punishable by a fine from 500 to 1,500 lev (about 250 to 760 euro), increased from 1,500 to 3,000 lev (about 750 to 1,500 euro) in case of recidivism.

Article 39 punishes non-compliance with the maximum levels of additives, contaminants or solvents, in addition to the use of unauthorized substances in food production. Infringements are subjected to a fine from 250 to 500 lev (about 125 to 250 euro), increased from 500 to 1,000 lev (about 250 to 500 euro) in the event of recidivism.

The same penalties are provided for non-compliance with rules on food contact materials, advertising and labeling.

Equally prohibited is the manufacturing of foodstuffs in unauthorized premises, punishable by a fine from 500 to 1000 lev (about 250 to 500 euro); or in violation of hygiene rules or protocols to prevent risks of contamination. In such circumstances, monetary fines range from 200 to 1,500 lev (about 100 to 770 euro).

Furthermore, the import in Bulgaria of foodstuffs in violations of the Food Law requirements is subjected to a fine from 200 to 1,500 lev (about 100 to 770 euro) by Article 44, whereas the treatment of food with ionizing radiation without the authorization of the Ministry of Health, is punishable by a fine from 1,000 to 3,000 lev (about 510 to 1,550 euro).

Article 46 of the Food Law provides that obstructing safety controls to be carried out by public authorities is sanctioned with a fine from 500 to 1,000 lev (about 250 to 500 euro), increased from 1,000 to 1,500 lev (about 500 to about 750 euro) in cases of repeated offenses; while disregarding orders from enforcement authorities following inspections is subjected to a fine from 250 to 500 lev (about 130 to 260 euro).

Concerning criminal penalties, Article 350 of the Bulgarian Criminal Code punishes with imprisonment up to five years the manufacturing, sale and distribution of food or drinks, intended for public use, which are contaminated by hazardous substances, due to public health risk. Moreover, Article 350 paragraph 2 provides that the violation of the rules on production, processing, storage or trade in animals or raw materials intended for human consumption is punished with imprisonment up to three years. If the infringing act results in serious injury, the term of imprisonment ranges from one to eight years.

If the death of a person ensues, the prison sentence can reach fifteen years. In general terms, Article 350a clarifies that the production and sale of food, feed, veterinary medical products or beverages, in violation of relevant legal requirements, which causes a risk to health, is punished with imprisonment up to three years.

Actions and operations at national and international level

Bulgaria is committed to fighting counterfeiting and food fraud on the domestic market, as well as through the participation in international operations, such as Operation White Mercury, coordinated by Interpol (2013), and operation Opson, conducted by Interpol and Europol (2011). According to the *Report on EU customs enforcement of intellectual property rights*, published by the Directorate-General for Taxation and Customs Union - DG TAXUD, in 2014 the Bulgarian Customs Administration seized 635,706 counterfeit goods at national borders, with a 13% increase compared to 2013.

Databases and statistics on counterfeiting and food fraud

Bulgaria participates in the databases of the European Union for the fight against counterfeiting, the Enforcement Database (EDB) and the Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Bulgarian authorities provide information on seizures at the borders of merchandise suspected of infringing intellectual property rights.

Concerning food fraud, Bulgaria is a member of the Rapid Alert System for Food and Feed (RASFF). The RASFF 2015 Annual Report shows a significant contribution from the Bulgarian authorities to the system, as submitted notifications have risen from 10 in 2007 to 99 in 2015.

CROATIA

Intellectual property rights

Croatia is a member of the EU and of the WTO.

It has ratified several international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Patent Cooperation Treaty, the Trademark Law Treaty and the WIPO Copyright Treaty.

Domestic law on intellectual property rights recognizes:

Geographical indications: the national legal framework for geographical indications includes the Law on Geographical Indications and Appellations of Origin of products and services, the Law on Agriculture and its implementing regulations, as well as specific ordinances relating to wine and spirits.

Trademarks: the exclusive right to use a registered trademark is protected by the Trademark Law, which defines the registration procedures and protects well-known trademarks.

Patents are disciplined in the domestic Patent Law, which specifies the registration procedure and defines penalties for infringement.

Copyright and Related Rights are disciplined in the Law on Copyright and Related Rights, which attributes to the author of protected work moral and economic rights.

Industrial designs are regulated by the Industrial Designs Act, which specifies the registration procedure and defines penalties for infringement.

Registration of intellectual property rights

The State Intellectual Property Office of the Republic of Croatia (*Državni zavod za intelektualno vlasništvo Republike Hrvatske* - DZIV) is responsible for the protection and registration of all intellectual property rights.

The application to register geographical indications for foodstuffs, wine and spirits must be addressed to the Ministry of Agriculture (*Ministarstvo poljoprivrede*). As for non-agricultural products and services, the competence is entrusted to the State Intellectual Property Office (DZIV).

Sanctions regime

Geographical Indication Infringements

In accordance with EU law, Croatia protects geographical indications, appellations of origin and traditional specialties guaranteed. Upon registration, the use of such indications is forbidden to

designate agricultural products and foodstuffs not compliant with product specifications. In cases of infringement, Article 289 Criminal Code provides for a term of imprisonment up to three years, if the offender has obtained a substantial profit or has caused serious damage to the legitimate right holder. Moreover, the machinery used to commit the crime must be confiscated, whereas counterfeit products must be destroyed.

In addition, Article 53 of the Law on Geographical Indications and Appellations of Origin of products and services prohibits the direct use as well as indirect references to registered geographical indications and designations of origin to designate identical or similar products, or in such a way to cause harm or to exploit the reputation of the legitimate right holder. Equally prohibited are references in business correspondence, conveying the false impression of a link between the product and the protected geographical indication or appellation of origin, along with any conduct liable to deceive the public about the geographical origin of a product. Infringing legal persons are punishable by a fine from 20,000 to 100,000 Croatian kuna (about 2,600 to 13,000 euro), while natural persons are subjected to a penalty from 2,000 to 8,000 Croatian kuna (about 270 to 1,100 euro). Upon issuance of the verdict, the Court may order the destruction of counterfeit products.

Trademark Infringements

Pursuant to Article 80 Trademark Law, third parties must refrain from the use, reproduction or imitation of a registered trade mark without the authorization of the legitimate right holder, as well as from the sale, storage for the purpose of sale, import, export and use in business correspondence of products unlawfully bearing a registered trademark. Infringing legal persons are punishable by a fine from 20,000 to 100,000 Croatian kuna (about 2,600 to 13,000 euro). A sanction from 5,000 to 10,000 Croatian kuna (about 670 to 1350 euro) is inflicted on the legal representative of the responsible company. Infringing natural persons are instead subjected to a fine from 2,000 to 8,000 Croatian kuna (about 270 to 1,100 euro).

Article 288 of the Croatian Criminal Code prohibits the use of any sign identical or similar to a trademark in commercial operations, for goods or services identical or similar to those for which the trademark is registered, should a risk of confusion arise about the origin of the product. If the culprit acquired substantial economic benefit or has caused serious harm to the right holder a prison term up to three years can be inflicted. Article 288 paragraph 3 specifies that the equipment used for the commission of the crime must be seized, whereas counterfeit products must be destroyed.

Patent Infringements

According to Article 97 Patent Law, third parties must refrain from the production, sale, use, export and import of patented products or products obtained directly from a patented process

without the consent of the right holder. Equally prohibited is the unauthorized use of a patented process, as well as the sale of a product which constitutes an essential element to operate an invention. Legal persons liable for the above conducts are punishable by a fine from 20,000 to 100,000 Croatian kuna (about 2,700 to 13,450 euro). A sanction from 5,000 to 10,000 Croatian kuna (about 670 to 1350 euro) is inflicted to the legal representative of the company. If the above conducts are attributed to natural persons a fine from 2,000 to 8,000 Croatian kuna (about 270 to 1,075 euro) is applicable.

Article 287 of the Croatian Criminal Code provides that false allegations to obtain a patent for a new product or process are subjected to imprisonment up to one year.

The same article specifies that if the above conducts resulted in the achievement of considerable illicit profits for the culprit, or in significant damage to the patent holder, the prison sentence may be increased to three years.

Article 287 paragraph 4 clarifies that the equipment used to commit the crime must be seized, whereas counterfeit products must be destroyed.

Industrial Design Infringements

Article 58 of the Industrial Designs Law punishes the production, sale, import, export and use of products illicitly incorporating a registered design or industrial model with a fine ranging from 20,000 to 100,000 Croatian kuna (about 2,700 to 13,450 euro). A penalty from 5,000 to 10,000 Croatian kuna (about 670 to 1,344 euro) is inflicted to the legal representative of the responsible company. If the above conducts are attributed to natural persons, sanctions range from 2,000 to 8,000 Croatian kuna (about 270 to 1,075 euro). Article 58 paragraph 4 establishes that the equipment used to commit the crime and the counterfeit products must be destroyed.

Copyright Infringements

Pursuant to Article 284 of the Criminal Code infringements of the author's moral rights are punished with imprisonment up to one year.

Article 285 of the Criminal Code specifies that the violations of the author's economic rights are sanctioned with imprisonment up to three years.

According to Article 285 paragraph 3, the same punishment applies to the circumvention of technological protection measures adopted by authors or artists to protect his/her exclusive rights on a work. In such cases, Croatian law mandates that the equipment used to commit the offense be seized, while the pirated products be destroyed, unless they are claimed by the copyright holder.

Specific administrative sanctions for infringements of the author's moral and economic rights are provided for in Article 189 of the Law on copyright and related rights. Fines range from 5,000 to 50,000 Croatian kuna (about 670 to 6,700 euro) for legal entities, and from 2,000 to

10,000 Croatian kuna (about 270 to 1,350 euro) for legal representatives of legal persons and for individuals. Pursuant to Article 189 paragraph 4 of the Law on copyright and related rights the pirated products must be seized and destroyed. Article 192 of the Law on copyright and related rights further specifies that if the above offenses have been committed on a commercial scale and to acquire illicit profit, financial penalties range from 10,000 to 100,000 Croatian kuna (about 1,350 to 13,450 euro) for legal entities, and from 4,000 to 10,000 Croatian kuna (about 550 to 1,350 euro) for legal representatives of the companies and individuals.

National Anti-Counterfeiting Authorities

As required by Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities, the Croatian Customs Administration (*Uprava carinska*), within the Ministry of Finance (*Ministarstvo Financija*), may seize goods suspected of infringing intellectual property rights, both upon request of the right holder and *ex officio*.

The competence for the fight against counterfeiting is also attributed to the Directorate General of Police (*Ravnateljstvo policije*) within the Ministry of Interior (*Ministarstvo unutarnjih poslova*).

Food safety

Competent authorities

The Croatian Agency for Food Safety (*Hrvatska Agencija za Hranu*) carries out scientific research on the safety and hygiene of food and feed.

The Ministry of Agriculture (*Ministarstvo poljoprivrede*), Directorate for Animal Health and Food Safety is mandated to ensure food and feed safety, animal and plant health. To achieve these goals, it manages inspections and official controls. The Directorate for the quality of food is responsible for geographical indications for agricultural products, information on food products and labeling requirements.

The Ministry of Health (*Ministarstvo zdravlja*) is in charge of official controls on food products of non-animal origin, contact materials, novel foods, GMOs, additives, flavorings and other contaminants.

Repression of food fraud

Croatia complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 853/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 853/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

The Food Law (O.G. 81/2013, 14/2014, 30/2015) is the domestic relevant discipline, implementing the European regulation and providing an overview of food and feed safety requirements.

Croatian law establishes criminal penalties against food fraud both in the national Food Law and in the Criminal Code.

Chapter XIX of the Food Law lists three categories of violations in Articles 101, 102, 103, punishable by monetary fines according to the gravity of the offense. In particular, Article 101 punishes with a fine from 100,000 to 500,000 Croatian kuna (about 13,450 to 67,200 euro) non-compliance with legal requirements for the sale and labeling of the so-called Novel Food and feed, as established in the Food Law.

Article 102 establishes instead a fine from 50,000 to 100,000 Croatian kuna (about 6,700 to 13,450 euro) for the sale of foodstuffs hazardous to health or unfit for human consumption, as well as for the import in Croatia of foodstuffs in breach of safety requirements. The same penalties apply to cases of non-compliance with legal obligations of food business operators, such as: the duty to register industrial and commercial premises in registers kept by the Ministries of Agriculture and Health and the obligation to withdraw from the market unsafe products and to notify the Ministries of Agriculture and Health. Article 102 also punishes non-compliance with the protocol to prevent the contamination of foodstuffs, along with the sale of feed hazardous to animal health.

Moreover, Article 103 establishes a fine from 30,000 to 70,000 Croatian kuna (about 4,050 to 9,400 euro) for sale of foodstuffs past the expiration date, failure to register industrial premises for primary production of agricultural products in the ministerial records, as well as for non-compliance with food safety standards along the supply chain. The same penalties apply to the infringement of traceability requirements of food, raw materials and animals used

in food production. In particular, Article 28 Food Law provides that business operators must keep and update a specific register of their suppliers and customers.

Finally, Article 103 punishes breaches of food labeling requirements, as laid down in Articles 52-54 Food Law, in order to preserve consumer health.

Specific provisions on food fraud are also found in the Croatian Criminal Code Article 188, which mandates imprisonment up to one year for the intentional production, sale and distribution of food products hazardous to human health. Article 189 also punishes with imprisonment up to three years professional misconduct by veterinarians and inspectors in charge of official controls on animals intended for human consumption, resulting in the distribution of meat harmful to human health.

Article 192 of the Criminal Code further specifies that if the conducts referred to in Articles 188-189 cause serious bodily injuries, the prison sentence ranges from six months to five years.

Actions and operations at national and international level

According to the Report on EU customs enforcement of intellectual property rights, published by the Directorate-General for Taxation and Customs Union - DG TAXUD, in 2014 the Croatian Customs Administration seized 122,794 counterfeit goods at national borders, with an increase of 107% compared to 2013.

Moreover, Croatia has participated in international operations, such as Opson IV, coordinated by Interpol and Europol (2011), as well as in a joint operation with the European Anti-Fraud Office (OLAF) and the British customs authorities in March 2015, resulting in the seizure of a container in the port of Rijeka, carrying 9,000,000 counterfeit cigarettes intended for the UK market.

Databases and statistics on counterfeiting and food fraud

Croatia participates in the databases of the European Union for the fight against counterfeiting, the Enforcement Database (EDB) and Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Croatian authorities provide information on seizures, both at the borders and on the national market, of articles suspected to infringe intellectual property rights.

Concerning food fraud, Croatia is part of the EU Rapid Alert System for Food and Feed (RASFF). Relevant data on food fraud cases are managed through the Administrative Assistance and Cooperation system (AAC), within the Ministry of Agriculture.

The RASFF 2015 Annual Report shows a limited contribution of the Croatian authorities to the system - due to the recent accession to the EU.

EGYPT

Intellectual property rights

Egypt is a member of the WTO and has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Patent Cooperation Treaty (1970) and the WIPO Copyright Treaty (1996).

The protection of copyright and related rights, geographical indications, trademarks, patents and industrial designs is provided by Law no. 82/2002 on the protection of intellectual property rights. Specific implementing provisions are contained in Prime Minister's Decree n. 497/2005 and in Consumer Protection Law no. 67/2006.

Food safety is disciplined in Law n. 10/1966 on the control and trade of foodstuffs.

Registration of intellectual property rights

The Egyptian Patent Office, within the Ministry of Scientific Research, is responsible for patent registration and protection.

The protection of copyright and related rights is entrusted to the Permanent Office for the Protection of Copyright, within the Ministry of Culture.

Geographical indications, trademarks and industrial designs are instead registered with the Trademarks and Industrial Designs Office, within the Ministry of Trade and Industry.

Sanctions regime

According to EU statistics on counterfeit products' seizures, intellectual property rights infringement poses a significant threat in Egypt.

In accordance with the TRIPS Agreement, intentional trademark and copyright infringements are respectively defined as "counterfeiting" and "piracy" and subjected to criminal penalties.

However, monetary sanctions usually do not refund the losses incurred by right holders, bearing high litigation costs to obtain compensation of damages.

The establishment of an Economic Court, specialized in the adjudication of intellectual property rights disputes, as per Law 120/2008, is a positive step, due to the expertise of the Judges and the admissibility of electronic evidence (namely e-mail and IP addresses). Further improvements are needed in terms of the deterrence of the verdicts and consistency in enforcement, in light of the general slowness of trial procedures, as well as difficulties in the identifications of culprits and in the diligence of investigations.

Geographical Indication and Trademark Infringements

Article 113 Law 82/2002 provides that the unauthorized imitation or use of a registered trademark, in a way to mislead the public, amount to counterfeiting. Equally prohibited are the sale, distribution and purchase for resale of products bearing a counterfeit trademark. The law also protects well-known and foreign trademarks, in accordance with the provisions of the TRIPS Agreement. Infringements are punishable with two months imprisonment and a fine from 5,000 to 20,000 Egyptian lira (about 575 to 2,300 euro). In case of recidivism, the penalty is increased from 10,000 to 50,000 Egyptian lira (about 1,150 to 5,800 euro).

The Court may order the seizure and destruction of counterfeit goods, including their packaging and advertising materials, as well as the refund of unduly acquired profits. Moreover, the permanent withdrawal or the suspension of the offender's business license up to six months may be ordered.

In accordance with Article 63 of Law 82/2002, geographical indications have the same legal status as trademarks, whereas their terms of protection are specified in Article 114 Law 82/2002. It prohibits the use of a registered geographical indication in relation to goods which do not originate from the distinctive geographical area, do not comply with product specification, along with any reference which is liable to mislead the public as to the geographical origin of the product. Infringements are subjected to a one-month prison term and a fine from 2,000 to 10,000 Egyptian lira (about 200 to 1,000 euro), to be doubled in case of repeated offenses.

Patent Infringements

In accordance with Article 32 Law 82/2002, the Egyptian law recognizes to the patent holder an exclusive right of economic exploitation of an invention. In this perspective, third parties must refrain from the imitation, sale, and storage for commercial purposes, circulation, import, export and the use of a patented product without the consent of the right holder. Equally forbidden is the use of misleading signs pretending that a product is protected by a patent. Such conducts are sanctioned with a fine from 20,000 to 100,000 Egyptian lira (about 2,300 to 11,500 euro). In the event of recidivism, the fines are doubled and a prison sentence up to two years may also be inflicted.

The Court awards compensation for material and moral damages suffered by the patent holder and convicts the offender to refund unduly acquired profits, through asset freezing orders.

Industrial Design Infringements

According to Article 134 Law 82/2002, the illegal reproduction of a registered design or industrial model, as well as the production, sale, and purchase for resale of products which incorporate a registered design, along with false allegations purporting that a design has been

registered, are punishable by a fine from 4,000 to 10,000 Egyptian lira (about 400 to 1,000 euro). In case of recidivism, the Court may inflict a one-month prison sentence, and a fine from 8,000 to 20,000 Egyptian lira (about 800 to 2,000 euro). In addition, counterfeit products and the machinery used to commit the offense are subjected to seizure.

Copyright Infringements

Egyptian law recognizes economic and moral rights to the author of an intellectual work, enabling him/her to determine the conditions to disclose it to the public and authorize its use by third parties - through copying, printing, recording, playback, translation, adaptation, modification, disclosure through the internet, etc. According to Article 181 Law 82/2002, copyright infringements are punishable by a fine from 5,000 to 10,000 Egyptian lira (about 575 to 1,150 euro) and imprisonment up to one month. In case of recidivism, the fines range from 10,000 to 50,000 Egyptian lira (about 1,150 to 5,750 euro) and a three months prison sentence may also be inflicted. Article 181 specifies that as an accessory penalty the Court may order the seizure of equipment used to commit the offense.

National Anti-Counterfeiting Authorities

The Anti-Piracy Department of the Police at the Ministry of Interior is in charge to investigate and repress copyright infringements, a widespread problem in Egypt. The identification of such crimes remains complex and only large scale violations usually receive due consideration from law enforcement agencies.

The Egyptian Customs Administration within the Ministry of Finance deals with the collection of duties and other taxes. Moreover, it may seize counterfeit goods upon request of the legitimate right holder. However, the destruction of counterfeit products cannot be ordered *ex officio*, as it requires prior judicial authorization to a specific claim of the right holder, who bears storage and destruction costs. It is worth noting that Article 69 of the Egyptian constitution establishes a public commitment to the protection of intellectual property rights, and provides for the establishment of an administrative body to achieve this goal. No further implementing regulations have been issued yet.

Food safety

Competent authorities

The Ministry of Agriculture (*Ministry of Agriculture and Land Reclamation*) is in charge of carrying out phyto-sanitary controls and inspections on agricultural products and seeds.

The Ministry of Health and Population enforces compliance with safety requirements in food-processing premises, issues certificates to food business operators and manages administrative proceedings against infringements of food safety rules.

The Egyptian Organization of Standardization and Quality is responsible to approve food safety standards and ensure the alignment of Egyptian legislation with international standards.

Repression of food fraud

Food safety is disciplined by Law n. 10/1966 on the control and trade of foodstuffs and in presidential and ministerial implementing regulations.

The issue of food fraud is regulated by the combined provisions of Law 10/1966, and Law 281/1994, which amends Law 48/1941 on the fight against fraud and sophistication. Article 17 punishes with imprisonment up to one month infringements of health and hygiene conditions in the production, processing, transport and storage of food, as set out in Articles 7-9 of Law 10/1966. Furthermore, Article 18 clarifies that culpable violations of the rules of preservatives, additives, food contact materials and packaging, are subjected to a 100 Egyptian lira fine (about 10 euro).

Article 2 of Law 281/1994 punishes with imprisonment from one to five years, the intentional sale and the offer for sale of foodstuffs which are unfit for human consumption, adulterated, or not compliant with legal requirements. The same penalty applies to the supply of equipment or funds used to commit the crime. Article 3 of Law 281/1994, specifies that the storage and import for the purpose of sale of adulterated food products or equipment used to commit food fraud amount to a crime. According to Article 4 Law 281/1994, if food fraud results in serious bodily harm, a fine from 25,000 to 40,000 Egyptian lira is applicable (about 2,520 to 4,040 euro). If the death of the victim ensues, the Court may inflict a fine from 50,000 to 100,000 Egyptian lira (from about 5,050 to about 10,100 euro) and life imprisonment.

Actions and operations at national and international level

Egypt has participated in international anti-counterfeiting operations, such as: the Interpol-Europol Opson IV joint operation, which took place from December 2014 to January 2015. Moreover, in 2009, the Egyptian police, customs officials and private sector representatives have conducted a series of operations to detect and seize counterfeit medicines, in cooperation with the International Medical Products Anti-Counterfeiting Taskforce (IMPACT) World Health Organization.

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available. Food fraud poses a significant problem to Egypt, which is the third country of origin of counterfeit goods seized at European borders in 2014, according to the latest annual report on EU Customs enforcement of intellectual property rights.

FRANCE

Intellectual property rights

France is a member of the EU and of the WTO. It has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Patent Cooperation Treaty, the Trademark Law Treaty, the WIPO Copyright Treaty, the Lisbon agreement for the protection of appellations of origin and their international registration.

The domestic regime of intellectual property rights is mainly contained in the Intellectual Property Code, which protects:

Geographical indications: French law complies with Regulation (EU) No. 1151/2012 on geographical indications for agricultural and food products and disciplines geographical indications, designations of origin and traditional specialties guaranteed. Appellations of origin are regulated in Articles L115-1 et seq. of the Consumer Code, while the geographical indications in Articles L721-2 et seq. of the Code of Intellectual Property. Article L115-21 of the Consumer Code, jointly with Articles L641-10, L641-11 and L641-12 of the Code Rural and Sea Fisheries, specify the requirements for the award of appellations of origin and geographical indications and introduces the concept of Traditional Speciality Guaranteed.

Trademarks are regulated in Articles L711-1 - L721-1 Intellectual Property Code, detailing the exclusive rights of the right holder, the registration procedures and the special protection for well-known trademarks.

Patents: the exclusive rights of the patent holder are set out in Articles L611-1 to L623-35 of the Intellectual Property Code.

Industrial Designs are disciplined in Articles R511-1 to R521-1-1 of the Intellectual Property Code.

Copyright and Related Rights are governed by Articles L111-1 to L343-4 and L211-1 to L217-3 of the Intellectual Property Code, which attribute moral and economic rights to the author of an intellectual work.

The regulatory framework was strengthened in 2007 with the promulgation of Law No. 2007-1544 on the fight against counterfeiting. Specific provisions are in force with regard to the criminal protection of literary and artistic property on the Internet, contained in Law No. 2009-1311 (2009), while sanctions against the abuse of geographical indications are regulated in the Consumer Code and in the Rural and Fishery Code.

Registration of intellectual property rights

The National Institute of Industrial Property (*Institut national de la propriété industrielle* - INPI) is in charge of the protection and registration of trademarks, patents and industrial designs.

The Office of Literary and Artistic Property (*Office pour la propriété littéraire et Artistique*) within the Ministry of Culture and Communication is tasked with the protection of copyright and related rights.

Geographical indications are registered upon request of a single operator or an association of producers or processors, which deal with specific agricultural products or foodstuffs. The request has to be filed with the National Institute of Origin and Quality (*Institut national de l'origine et de la qualité* - INAO). The Institute also compiles a manual on the requirements for the registration of quality schemes - including the definition of the geographical area and the production conditions.

Sanctions regime

The French legal system defines counterfeiting as infringements of intellectual property rights, which are specified in the Intellectual Property Code.

Both criminal and civil remedies are provided; including compensation of damages, confiscation of crime proceeds, interim injunctions, seizure and destruction of counterfeit goods and machinery used to commit the offense.

Upon conviction, the Court may order the suspension or withdrawal of the offender's business license and the closure of industrial or commercial premises.

Geographical Indication Infringements

Article L115-16 of the Consumer Code provides that the illegal exploitation of a registered geographical indication or designation of origin is punishable by a two years prison term and a fine of 300,000 euro. The prohibited conducts include non-compliance with the requirements of the Rural and maritime fishing Code for the assignment of a geographical indication or a designation of origin to a foodstuff; the misrepresentation of any food product as a recipient of a geographical indication or a designation of origin, including through the deliberate marking of products for sale or intended for sale with misleading signs or references to a protected quality scheme.

Trademark Infringements

In accordance with Article L716-9 of the Intellectual Property Code, the import, export, transportation and manufacturing of goods bearing a forged trademark for commercial purposes, are punishable by a fine up to 400,000 euro and a four years prison sentence. Article

L716-10 clarifies that the storage and sale of counterfeit products, as well as the unauthorized reproduction, imitation, use, removal and modification of a collective or guarantee mark, are subjected to a 300,000 euro fine and to a three years prison term.

If the above offenses are committed by an organized criminal group, through the Internet, or if counterfeit products pose a threat to human or animal safety, the penalties are increased to five years' imprisonment and a fine of 500,000 euro. In case of recidivism or if a prior contractual relation is in place between the offender and the trade mark owner, the penalties are doubled.

Patent Infringements

Articles L613-3 - L613-6 Intellectual Property Code provide that the patent holder has the exclusive right of commercial exploitation of his/her invention and prohibit the circulation and sale of goods bearing the word "patent", "patented", or any other illicit reference to patent protection. According to Article L615-14, intentional infringements are punishable by a fine up to 300,000 euro and three years' imprisonment.

Article L615-12 provides that false attribution of a patent is subject to a fine up to 7,500 euro. The intentional public disclosure of inventions for which a patent application is under examination is subjected to a fine of up to 4,500 euro. If the offense results in a threat to national defense, a five years prison term may be inflicted.

The same penalties provided for trademark infringement are applicable for patent infringement. Furthermore, recidivism or the existence of a prior contractual relation between the offender and the patent holder are considered aggravating circumstances.

Industrial Design Infringements

Pursuant to Article L521-10 of the Intellectual Property Code, intentional violations of the right to the exclusive use of a registered design or industrial model are punished with imprisonment up to three years and a 300,000 euro fine. If the crime was committed in by an organized criminal group, through the use of computer networks or if counterfeit products are hazardous to human health, the prison term is increased to five years and the fine may reach 500,000 euro.

Moreover, counterfeit products and the machinery used to commit the offense are subjected to seizure.

Copyright Infringements

In accordance with Article L335-2 of the Intellectual Property Code, the unauthorized reproduction of protected scientific or artistic works amounts to counterfeiting, punishable by imprisonment up to three years and a fine up to 300,000 euro. If the crimes have been

committed by an organized criminal group, the penalties are increased to five years imprisonment and up to 500,000 euro fine.

The unauthorized printing, production, duplication, reproduction or copying, sale, distribution or offer for sale of any work, in breach of copyright law, is punishable by a 300,000 euro fine and three years' imprisonment; as well as making available to the public software enabling the distribution of protected works. Article L335-3 clarifies that the same penalties apply to the illicit public disclosure, by any means, of protected artistic performances, including the total or partial recording of films.

Finally, Article L335-4 punishes any fixation, reproduction, communication or making available to the public, on payment or free of charge, along with broadcasting of a performance, a phonogram, a videogram or a program, without authorization of the performer, phonogram or videogram producer or of the audiovisual communication enterprise, where such authorization is required. The above conducts are subjected to a three-year prison term and a 300,000 euro fine.

National Anti-Counterfeiting Authorities

The French Customs Administration (*Direction générale des Douanes et droits indirects*), within the Ministry of Economy (*Ministère de l'Economie*), is tasked to adopt border measures against intellectual property rights infringement. As required by Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities, the Customs Administration may seize counterfeit goods, either at the request of the right holder or *ex officio*.

The Directorate General of Competition, Consumer Affairs and Fraud Control (DGCCRF - *Direction générale de la concurrence, de la consommation et de la répression des Fraudes*), within the Ministry of Economy, relies on inspectors in each Local Directorate (*Direction Départementale*) to investigate alleged violations of intellectual property rights.

From an operational point of view, a significant role in the fight against counterfeiting is covered by the National Gendarmerie (*Gendarmerie Nationale*) and the National Police (*Police Nationale*), within the Ministry of Interior.

Food safety

Competent authorities

The French Agency for Food, Environmental and Occupational Health & Safety (*Agence nationale de la sécurité sanitaire chargée de l'alimentation, de l'environnement et du travail* - ANSES) is the national agency for food safety and has the mandate to monitor, coordinate and scientifically examine practices, operations and activities relating to food products' supply chain.

The inspectors of the Directorate General for Competition, Consumption and Repression of Fraud (*Direction générale de la concurrence, de la consommation et de la répression des Fraudes* - DGCCRF) within the Ministry of Economy, may conduct investigations against illicit practices and ensure compliance with food safety requirements, related to labeling, contact materials, GMOs and feed.

The Directorate General of Food (*Direction Générale de l'Alimentation*), within the Ministry of Agriculture (*Ministère de l'Agriculture*), is tasked with ensuring food safety, animal and plant health. It also issues authorization to the use of pesticides and contaminants.

Repression of food fraud

France complies with Regulation (EC) No. 178/2002, laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 852/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

The issue of food fraud in France is jointly disciplined in the Consumer Code and in the Rural and Fishery Code. Article L213-2-1 of the Consumer Code punishes the export of foodstuffs or animal feed hazardous to public health, in breach of the requirements set forth in Regulation (EC) No. 178/2002, with a fine up to 600,000 euro.

Pursuant to Article L213-3 of the Consumer Code, the same penalties apply to the intentional adulteration of food or feed, beverages and agricultural products intended for sale, as well as to any form of advertising for the sale of equipment enabling the deliberate adulteration of foodstuffs.

Article L213-3 paragraph 2 specifies that the penalties may be increased up to 750,000 euro fine and seven years' imprisonment if illicit conducts are committed by an organized criminal group or if the adulterated substance causes damage to human or animal health. Consumer awareness of the fraudulent nature of the goods does not exclude or limit the application of sanctions.

Moreover, article L213-4 prohibits the storage of adulterated foodstuffs, agricultural products, beverages, feed as well as of counterfeit measuring instruments or equipment used to carry out food fraud, in industrial and commercial premises and vehicles used for the production, processing, transport and storage of foodstuffs. Violations are punished with a fine up to 150,000 euro.

In accordance with Articles 19-20 of Regulation (EC) 178/2002, Article L217-11 punishes with imprisonment up to five years and a fine up to 600,000 euro food business operators who fail to put in place a recall mechanism if they are aware, or have reason to believe that foodstuffs they produced, processed or distributed threaten human health.

Measures to counter food fraud are found also in the Rural and Fishery Code, which in Article L237-1 mandates imprisonment up to two years and a 300,000 euro fine against the offer for sale, or the placing on the French market of products containing stilbene derivatives, thyreostatic substances, 17 beta estradiol, and anabolic steroids in feed for livestock intended for human consumption. Article L237-2 finally states that infringements of legal requirements for the sale of foodstuffs or animal feed are punishable by imprisonment up to six months and a fine up to 15,000 euro. The same penalties apply to the use of restricted or prohibited substances in animal feed.

Article L237-2 paragraph 3 sanctions with imprisonment up to four years and a 600,000 euro fine the placing on the domestic market of foodstuffs or feed with adverse effects on health or unfit for human or animal consumption. Finally, article L237-3 punishes with imprisonment up to two years and a 300,000 euro fine the introduction on the national territory or the offer for sale of livestock and products of animal origin intended for human consumption, in breach of hygiene requirements provided by the Ministry of Agriculture and veterinary controls. If the act results in a serious risk to human or animal health, the prison term may be increased up to five years and the fine up to 600,000 euro.

Actions and operations at national and international level

France conducts enforcement actions against counterfeiting and food fraud, both at national and international level.

As for the domestic market, in 2014 the French Customs Administration has seized about 8.766 million fake products, including 276,000 agro-food products. Of great importance is also the seizure of 2,581,000 units of counterfeit medicines.

From November 2015 to February 2016, France took part in the Interpol-Europol joint Operation Opson V, which allowed the identification and destruction of 11 kg crickets and 20 kg grasshoppers intended for human consumption.

Databases and statistics on counterfeiting and food fraud

France participates in the databases of the European Union created for the fight against counterfeiting, the Enforcement Database (EDB) and the Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the French authorities provide information on seizures, both at the border and in the internal market, of articles suspected of infringing intellectual property rights.

As for food fraud, France participates in the EU Rapid Alert System for Food and Feed (RASFF). The RASFF 2015 Annual Report shows that the number of notifications received by French authorities has grown from 127 in 2007 to 236 in 2015.

GREECE

Intellectual property rights

Greece is a member of the EU and of the WTO. It has ratified several international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Patent Cooperation Treaty, the Trademark Law Treaty, the WIPO Copyright Treaty and the Lisbon agreement for the protection of appellations of origin and their international registration.

Domestic law on intellectual property rights recognizes:

Geographical Indications: Greek law complies with Regulation (EU) No. 1151/2012 on geographical indications for agricultural and food products and disciplines geographical indications, designations of origin and traditional specialties guaranteed.

Trademarks: the exclusive rights of the trademark owner are disciplined by Law No. 4072/2012 on trademarks, which also protects well-known distinctive signs.

Patents and industrial designs are dealt with in Law 1733/1987 on Technology transfer, inventions and technological innovation.

Copyright and Related Rights: are regulated in Law 2121/1993 on copyright, related rights and cultural issues (as amended up to the Law 4281/2014). According to the law, the author of a protected work enjoys both moral and economic rights.

Registration of intellectual property rights

The Directorate of Commercial and Industrial Property, which is part of the General Secretariat for Trade, is responsible for trademark registration.

Patents and designs are registered with the Hellenic Industrial Property Organization; whereas the Hellenic Copyright Organization is in charge of the protection of copyright and related rights.

Applications to register geographical indications with the Agricultural Products Certification and Supervision Organization (AGROCERT) can be filed by any association of producers or processors of the specific agricultural products or foodstuffs. Within six months, the institution may consider that the application is admissible and forward it to the Commission for a final decision, or reject it.

Sanctions regime

Despite the legislative provisions, rights holders expressed concerns over the practice of commuting custodial sentences in monetary fines for cases of counterfeiting. Equally

significant is the general inadequacy of damages awarded by civil Courts relative to the damages suffered by legitimate rights holders, who often face difficulties in securing the enforcement of judgments.

Geographical Indication Infringements

Registered geographical indications can neither be used to designate products or services whose quality, reputation or characteristics are below the standard associated to the quality scheme, nor to identify different types of goods. According to Article 17g Law 3966/2011, which, among other functions, harmonizes national law with Directive 2004/48/EC on the civil enforcement of intellectual property rights, the legitimate user of a registered geographical indication or appellation of origin can file a civil complaint against infringements of his/her rights and may request interim injunctions and evidence preserving measures against violations.

Trademark Infringements

Pursuant to Article 156 Law 4072/2012, the unauthorized use on products or packages of a sign identical or similar to a registered trademark, as well as the sale, rental and distribution of goods bearing a counterfeit trademark, are punishable by imprisonment up to six months or a fine up to 6,000 euro. The same penalties apply in case of transit on Greek territory of counterfeit merchandise intended to a third country.

Article 156 paragraph 2 specifies that achieving a substantial illicit profit, or causing serious damages to the legitimate right holder, are aggravating circumstances and determine the application of a two years prison term and a fine from 6,000 to 30,000 euro.

Patent Infringements

Greek Law recognizes the exclusive right of the patent holder to the commercial exploitation of his/her invention and prohibits the circulation and sale of goods bearing the word "patent", "patented", along with any other false reference to patent protection. According to Article 17 paragraph 7 of the Patent Law, the misrepresentation of a product as subject to patent protection, through advertisement, amounts to a criminal offense and is punishable by a 150 euro fine and/or imprisonment up to one year. The illicit use of a patented product or process, instead, is a tort, which enables the right holder to file a civil complaint in order to obtain compensation for damages.

Industrial Design Infringements

In light of the reference to patent protection provided by Article 28 co.2 of Presidential Decree 259/1997, Greek law establishes that any misrepresentation of an industrial design as a registered, through advertisement, amounts to a crime punishable by a 150 euro fine and/or

one year imprisonment. The unlawful use of a registered design is, instead considered a tort, which enables the legitimate right holder to file a civil complaint to obtain compensation for damages.

Copyright Infringements

According to Article 66 of the Law on copyright and related rights, the unauthorized printing, production, duplication, or any reproduction or copying, sale, distribution or offering for sale of any work (including software), in breach of copyright is punishable by imprisonment up to one year or a fine from 2,900 to 15,000 euro. Moral damages must also be compensated and are supplemented by an administrative sanction amounting to twice the royalties. Alternatively, the right holder may request the refund of the unduly acquired profit.

The same aggravating circumstances provided for trademark infringement are applicable to copyright piracy. Moreover, Article 66 paragraph 3 provides that if infringements have been carried out on a commercial scale, the prison term is increased up to ten years and the fine ranges from 15,000 to 30,000 euro, supplemented by the withdrawal of the offender's business license.

In accordance with Article 66a paragraph 4 of the Law on copyright and related rights, the circumvention of technological protection measures is punishable by imprisonment up to one year and a fine of 2,900 to 15,000 euro.

National Anti-Counterfeiting Authorities

As required by Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities, the Greek Customs Administration (*Directorate General of Customs and Excise Duties*), within the Ministry of Finance may seize goods suspected of violating intellectual property rights, upon request of the right holder or *ex officio*.

With reference to customs controls, a critical issue is the absence of a legal provision which allows the inspection and detention of counterfeit goods in transit on the national territory.

A second issue related to the effectiveness of customs protection is the absence of limits as for the amount and the terms of storage for merchandise seized at ports prior to its destruction. This is problematic as Law 4155/2013 on the protection of trademarks states that the trademark owner must bear storage and destruction costs of counterfeit goods. Therefore, representatives of the private sector advocate the storage of a sample of seized counterfeit goods, so as to reduce the related costs.

A specialized unit for investigations on intellectual property infringements is operational at the Special Secretariat for Financial and Economic Crime Unit (SDOE), within the Ministry of Finance.

From an operational standpoint, investigations and inspections against counterfeiting are attributed to the Greek Police (*Elliniki Astynomia*).

Finally, worth noting is the role of the SYKAP (*Coordination Centre against illicit trade*). Founded in 2014 by the Ministry of Development and Competitiveness, the SYKAP includes representatives of the Ministries, the Police and local authorities, and ensures coordination in the fight against counterfeiting, including by strengthening cooperation with intellectual property rights holders.

Food safety

Competent authorities

The Hellenic Food Authority (EFET) is the national agency for food safety, responsible for investigations and official controls, and to monitor, coordinate and examine practices, operations and activities relating to food.

The Ministry of Rural Development and Food (MINAGRIC), through its direction, is responsible for carrying out checks to ensure food and feed safety, animal and plant health, medicines and additives, pesticides, import and export of agricultural products.

The Chemical Laboratory of the State General (General Chemical State Laboratory), within the Ministry of Finance, conducts chemical laboratory analysis of food products and provides scientific and technical support to the various ministries and is also competent in the field of food and contact materials.

Repression of food fraud

Greece complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 852/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

Inspections can be conducted by the Ministry of Rural Development and Food.

Greece also lays down specific rules on labeling and on ingredients for some foodstuffs, described in detail in the Food products Code, as indicated by the State General Chemical Laboratory.

The issue of food fraud in Greece is disciplined by Law 4235/2014, laying down administrative measures, procedures and sanctions for the implementation of EU and national rules on food, feed, animal health and welfare.

With regard to official controls and sanctions, the text has modified Presidential Decree 79/2007, on additional measures to implement Regulations (EC) No. 178/2002, 852/2004, 853/2004, 854/2004 and 882/2004 with regard to hygiene rules for food of animal origin, of official controls on these products intended for human consumption and the rules of animal health and welfare and harmonization of veterinary legislation with Directive No 2004/41/EC.

Law 4235/2014 provides for two categories of food fraud, subjected to administrative or criminal penalties, based on the gravity of the offense and listed respectively in Articles 23 and 27.

In general terms, Article 4 provides that the competent public authorities, in the event of non-compliance with national or EU law food safety standards, can order the withdrawal from the market or destruction of foodstuffs or feed; the suspension or revocation of operators' business licenses, as well as performing safety controls and adopting corrective measures to the manufacturing process to ensure food safety.

Article 23 lists six categories of violations that give rise to the application of administrative sanctions.

These include obstruction to official controls on food safety, through the refusal to provide information, or by supplying false or incomplete information, punishable by a fine from 1,000 to 30,000 euro. Illegal is also the engagement in the food business without prior administrative approval and inclusion in the ministerial records, which is subjected to a fine from 1,000 to 10,000 euro. Should an infringement discovered during controls result in a serious risk to public health, or compromise consumer health, a fine from 61,000 to 500,000 euro is applicable.

Infringements of hygiene requirements laid down in Regulations (EC) 852/2004 and 853/2004 are sanctioned with a fine from 300 to 3,000 euro; whereas non-compliance with the duty to set up a protocol against food contamination is subjected to sanctions from 500 to 5,000 euro.

The production of food products hazardous to health or unfit for human consumption, in terms of Article 14 Regulation (EC) No. 178/2002, is subjected to a fine up to 60,000 euro. Article 23 -b clarifies that non-compliance with maximum permitted levels of additives, or with food contact materials regulations, are punishable by a fine from 500 to 60,000 euro; while a fine from 500 to 30,000 euro applies to infringements of foodstuffs advertising and labeling rules.

Criminally prosecuted are also violations of feed safety requirements, animal health and animal by-products standards.

To ensure the deterrence of sanctions, Article 23 paragraph 3 clarifies that administrative fines may be equivalent to 3% of annual profits for companies with a turnover in excess of 10,000,000 euro.

Article 27 of Law 4235/2014 disciplines infringements of EU and national legislation which amount to criminal offenses, such as the obstruction of food safety controls, through the refusal to provide information, or through the supply of false or incomplete information, which is punishable by a three months prison term.

Equally prohibited are the manufacturing, import, storage, distribution and sale of adulterated food, sanctioned with imprisonment up to three months, increased to six months if the act threatens consumer health, in accordance with Article 19 of Law 4177 / 2013, to which Article 27 of Law 4235/2014 refers.

Article 27, paragraph 4, specifies that recidivism in the same administrative offense, within two years from the first sentence, amounts to a criminal offense punishable with imprisonment up to six months. Paragraph 5 clarifies that the unauthorized production of genetically modified organisms (GMOs) in animal feed, in breach of Article 15 Regulation (EC) No. 1829/2003, is subjected to imprisonment from six months to two years and a fine from 6,000 to 15,000 euro.

Finally, Article 27 paragraph 6 of Law 4235/2014 provides that if the illicit conduct resulted in the spread of a pathogen agent, the offender is subject to a one-year prison term.

Actions and operations at national and international level

Greece is engaged in operations to combat counterfeiting at national and international level.

According to the Report on EU customs enforcement of intellectual property rights, published by the Directorate-General for Taxation and Customs Union - DG TAXUD, in 2014 the Greek Customs Administration have seized 728,784 fake goods at national borders, with an increase of 7% from 2013.

In March 2014, a joint operation between the Greek Customs Administration and OLAF has led to the discovery and seizure of several shipments of smuggled cigarettes worth 3.5 million euro.

Databases and statistics on counterfeiting and food fraud

Greece participates in the databases of the European Union for the fight against counterfeiting, the Enforcement Database (EDB) and the Anti-Counterfeiting Intelligence Support Tool (ACIST).

In particular, the Greek authorities provide information on seizures, both at the border and in the internal market, of articles suspected of infringing intellectual property rights.

As for food fraud, Greece participates in the EU Rapid Alert System for Food and Feed (RASFF). The RASFF 2015 Annual Report points out that the number of notifications received by the Greek authorities has decreased from 170 in 2007 to 64 in 2015.

ITALY

Intellectual property rights

Italy is a member of the EU and of the WTO.

It has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Patent Cooperation Treaty, the Trademark Law Treaty and WIPO Copyright Treaty.

The domestic legal framework on intellectual property rights is contained in the Industrial Property Code (D.Lgs.30 / 2005 and subsequent amendments), which disciplines:

Geographical indications: Italian law complies with Regulation (EU) No. 1151/2012 on geographical indications for agricultural and food products. Articles 29-30 of the Industrial Property Code protect geographical indications and appellations of origin.

Trademarks: the exclusive rights of the trademark owner are governed by Articles 7 et seq. of the Industrial Property Code, which also recognizes well-known trademarks.

Patents: according to Articles. 45 et seq. of the Code, technical innovations which are new, involve an inventive step and are susceptible of industrial application can be patented.

Industrial Designs: are protected in articles 31 et seq. of the Industrial Property Code.

Copyright and Related Rights: are regulated in Law 633 of 22 April 1941 and subsequent amendments. Pursuant to the law, the author of a protected work enjoys both moral and economic rights.

Decree of 13 January 2010, n. 33, provides Regulations for the Implementation of the Code of Industrial Property, detailing the procedures for recognition of intellectual property rights.

Registration of intellectual property rights

The Italian Patent and Trademark Office (DGLC-UIBM), within the Ministry of Economic Development, is in charge of the registration and protection of industrial property rights.

The Italian Society of Authors and Publishers (S.I.A.E.) is instead responsible for the protection of copyright and related rights.

Articles 180 and 180 bis of Law 633 of 22 April 1941 on copyright establish the Italian Society of Authors and Publishers (SIAE) as the sole body responsible for granting licenses for the use and authorize the cable transmission of protected works.

The Italian Society of Authors and Publishers also authorizes the distribution and reproduction (through any medium and in any place), the broadcasting, the sale and the rental of protected works.

Copyright-related attributions are also entrusted to the Ministry of Culture and Tourism (MIBACT) that, pursuant to Article 22 D.P.C.M. 29 August 2014/171 supervises the work of the Italian Society of Authors and Publishers (SIAE) through the Directorate General on Libraries and Cultural Institutes and, in agreement with the Directorate General on Budget, oversees the activities of the agencies, as mandated by Article 1 paragraph 3 of Law 9 January 2008, n. 2.

Moreover, through the Service II, Bibliographic Heritage and Copyright, the MIBACT manages relations with the World Intellectual Property Organization (WIPO), together the Ministry of Foreign Affairs and International Cooperation and the Committee the protection of intellectual property, established at the Presidency of the Council of Ministers.

The Ministry also maintains a Public General Register of Protected Works and a related database. Finally, the MIBACT is responsible for all matters relating to the obligation of deposit and the registration of the works, as well as for communication of orphan works in the database managed by the EUIPO (European Union Intellectual Property Office).

Applications to register geographical indications can be filed by any association of producers or processors working with specific agricultural products or foodstuffs. They must be addressed to the Ministry of Agriculture, Food and Forestry (MIPAAF) and to the Regional Administration from which the product originates.

Sanctions regime

The Italian legal system qualifies as counterfeiting a set of conducts infringing the exclusive rights of industrial property right holders, referred to in Articles 473 et seq. of the Criminal Code; whereas breaches of copyright are disciplined by Articles 171 et seq. of Law 633/1941.

Criminal and civil remedies are provided against intellectual property violations; including interim injunctions, seizure of counterfeit goods and machinery used in the illicit production, in order to prevent or halt the violation.

Law 23 July 2009 n. 99 has tightened penalties and provided for the mandatory confiscation of assets upon conviction for counterfeiting (Article 474 bis), and has introduced aggravating circumstances if the offense is committed systematically or through organized activities (Article 474 ter).

The same law punishes the manufacturing and sale of goods in breach of industrial property rights (Article 517 ter), as well as counterfeiting of geographical indications or appellations of origin of food products (Article 517 quater).

Upon issuance of the conviction, the Court may prohibit the manufacture, trade and use of infringing goods, as well as order the definitive withdrawal from the market from owners thereof. The Court may also order compensation for damages to the legitimate right holder, the refund of unduly acquired profits and publication of the judgment. Finally, counterfeit and

pirated goods can be allocated for social purposes, insofar as the necessary measures to ensure the respect of intellectual property rights have been taken.

Geographical Indication Infringements

In order to ensure the authenticity of distinctive signs and to protect consumers, Article 517 quater of the Criminal Code provides that the counterfeiting or alteration of geographical indications or appellations of origin for food products is punishable by imprisonment up to two years and a fine of up to 20,000 euro.

The same penalty applies to the import, storage for sale, direct sale to consumers or circulations of products bearing counterfeit indications or appellations.

Trademark Infringements

Article 473 of the Criminal Code establishes in general terms that intentional counterfeiting or alteration of domestic or foreign trademarks or distinctive signs of industrial products, or the deliberate use of the above trademarks or distinctive signs, is subjected to imprisonment from six months to three years and a fine from 2,500 to 25,000 euro.

According to Article 474 of the Criminal Code, the introduction in the State for profit-making purpose of industrial products bearing counterfeit or altered national or foreign trademarks or other distinctive signs is punishable by imprisonment from one to four years and a fine from 3,500 to 35,000 euro.

The storage for sale, sale or circulation of the above products for profit making purposes are sanctioned with imprisonment up to two years and a fine up to 20,000 euro.

Pursuant to Article 144 of the Industrial Property Code, the most serious cases of trademark and industrial designs, along with intellectual property deliberate violations committed systematically are defined as acts of piracy.

Patent and Industrial Design Infringements

Article 66 of the Industrial Property Code recognizes the exclusive right of the inventor to the commercial exploitation of his invention in Italy. According to Article 473 paragraph 2 of the Criminal Code, forgery or alteration of domestic or foreign patents, industrial designs, along with the use of counterfeit certificates, is punishable by imprisonment from one to four years and a fine from 3,500 to 35,000 euro.

Copyright Infringements

Violations of copyright are disciplined by Articles 171 et seq. of Law 633/1941 and subsequent amendments.

Article 171 punishes with a fine from 51 to 2,065 euro the unauthorized reproduction, public performance, dissemination, sale, or disclosure of a protected work, prior to its publication. The same penalty applies to the unauthorized distribution of a protected work on a computer network through any means.

If violations concern a work not intended for public disclosure, or if moral rights of authorship are infringed through distortion, mutilation or other modification of the work, or if honor or reputation of the author are otherwise offended, a prison term up to one year and a fine of 516 euro are applicable.

In accordance with Article 171 *bis*, illegal reproduction of software for profit-making purposes, as well as the import, distribution, sale or rental of copies of computer software not bearing the specific mark of the Italian Society of Authors and Publishers (SIAE) are subjected to imprisonment from six months to three years and a fine from 2,582 to 15,493 euro. The same penalty applies to the circumvention of technical protection measures, such as encryption or similar, used for copyright protection.

Article 171 *ter* provides that the unauthorized duplication, public disclosure, sale and import of more than 50 copies of any protected work, as well as their unauthorized distribution of a protected work on a computer network, are punishable by imprisonment from one to four years.

National Anti-Counterfeiting Authorities

The National Anti-Counterfeiting Council (CNAC), chaired by the Minister of Economic Development or his/her representative, is the inter-ministerial body for guidance, oversight and strategic coordination of the initiatives undertaken by each administration in the fight against counterfeiting, in order to improve law enforcement strategy at national level.

The Directorate General for Combating Counterfeiting - Italian Patent and Trademark Office (DGLC-UIBM), within the Ministry of Economic Development, operates on a national and international scale for the definition and implementation of anti-counterfeiting policies and strategies through awareness raising and information, assistance and support to citizens and businesses, the development and management of databases on counterfeiting, liaison and coordination with the competent authorities, including foreign entities.

Operational activities against counterfeiting are entrusted to Italian Customs Administration (*Agenzia delle Dogane e dei Monopoli*), the Financial Police (*Guardia di Finanza*), the Carabinieri and the State Police, including municipal police units.

The Italian Customs Administration operates through its Central Anti-Fraud and Controls Directorate and Central Directorate for Legal and Customs Procedures. The first coordinates and manages the enforcement actions against intellectual property rights infringements at national and international level and carries out relevant investigations; the second receives the national and international request for border measures. Furthermore, it can seize goods

suspected of violating intellectual property rights, intervening either upon request of the right holder or *ex officio*, in accordance with Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities.

The Guardia di Finanza is tasked with prevention, detection and repression of intellectual property rights infringements. To that end, it carries out inspections at industrial and commercial premises, and provides support to the Customs Administration.

With respect to the fight against counterfeiting and fraud in the food sector, of great importance are Health Protection Units of Carabinieri (*Comando Carabinieri Tutela della Salute* - CCTS). Formerly known as *Nucleo Anti Soffisticazioni* (NAS), CCTS concerns itself with health protection, under the direct control of the Ministry of Health. By virtue of this relation, officers have the powers of sanitary inspectors and are able to perform inspections at industrial and commercial premises of food business operators.

Finally, the seizure of counterfeit goods may also be conducted by personnel of the State Police and the Local Police.

Food safety

Competent authorities

The national food safety system provides reunites several public bodies pertaining to different ministries.

In particular, the Ministry of Agriculture, Food and Forestry relies on *the Central Inspectorate for Quality Control and the contrast of food fraud* (ICQRF), as well as on the *Directorate General for agro-food development, quality and consumer protection* and of the *Directorate General for Maritime Fishery and Aquaculture*.

Significant are also the role of the State Forestry Corps, which operates through its Second Division, notably its General Inspectorate and the Agro-food and Forestry Unit (*Nucleo Agroalimentare e Forestale* - N.A.F.); as well as the contribution of the Carabinieri of Agriculture and Food (*Comando Carabinieri Politiche Agricole e Alimentari*), operating through its Anti-Fraud Unit (*Nucleo Antifrode Carabinieri* - N.A.C.).

As regards food safety, the Ministry of Health coordinates the Department of Food products, Nutrition and Veterinary Public Health, the National Institute of Health, the peripheral offices of maritime and aerial health, the Border Inspection Posts, the Veterinary Offices for EU Requirements, as well as the Health Protection Unit of Carabinieri.

The framework of national authorities is completed by the local bodies, such as the Local Health Authorities, the Public Health Services, the Veterinary Services, Regional Observatories on Plant Protection, regional structures responsible for exercising supervision of control bodies,

the Fraud Repression Service in winemaking, the Provincials food rationing, the Sanitation Department.

Repression of food fraud

Italy complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 853/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 853/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

The Italian law punishes food fraud in the Criminal Code and in Law 283/1962 on hygiene standards in the production and sale of foodstuffs and beverages. While Law 283/1962 punishes crimes of abstract danger related to sanitary conditions of production and sale of foodstuffs, the Criminal Code punishes a series of crimes of concrete danger, referred to in Articles 439, 440, 442, 444, 452, 514, 515, 516 and 517.

With regard to the offenses provided for by Law no. 283/1962, Article 5 prohibits the use in the preparation of food or drink, the sale, storage for sale or administration to employees, along with any distribution for consumption, of foodstuffs which have been deprived, even partly, of nutrients, mixed with lower quality substances or otherwise treated to modify their natural composition, or are in poor conservation status; or have microbial loads exceeding the limits established by regulations or ministerial orders. The same prohibition applies to foods that are soiled, invaded by parasites, altered or otherwise hazardous; which underwent treatments aimed at concealing a state of alteration; were treated with any unauthorized chemical additives; or which contain residues of plant protection products used to preserve stored foodstuffs, which are hazardous to health.

Article 13 prohibits the offer for sale or any form of advertisement of food products, through false denominations, trademarks or quality certificates, as well as illustrative drawings which

are misleading to the public about the nature, substance, quality or nutritional properties of food substances or through health claims.

As regards remedies established by the Criminal Code, Article 439 punishes by a fifteen years prison term the contamination of water or foodstuffs intended for human consumption with lethal or toxic substances prior to the distribution thereof.

Article 440 paragraph 1 of the Criminal Code mandates imprisonment from three to ten years in case of intentional alteration of the natural composition of a substance intended for human consumption, which makes it harmful or fraudulently alters its authenticity. Article 440 paragraph 2 punishes counterfeiting of food products, namely the concealment of substances potentially hazardous to human health in the manufacturing of food products.

Article 441 of the Criminal Code specifically protects the integrity of packaging or containers of food products intended for trade, which cannot be altered in a way which threatens public health; whereas Article 442 prohibits the storage for sale, the placing on the market, or the distribution of water or food products, which are altered, counterfeit or poisoned and therefore hazardous to public health.

According to Article 444 of the Criminal Code, the storage, the offer for sale or distribution of food products which are injurious to human health, even if not counterfeit or altered, are subjected to imprisonment from six months to three years.

Article 515 of the Criminal Code, which is also applicable to the sale of foodstuffs, prohibits fraud in commercial activities, through the delivery of merchandise which is different for origin, quality, quantity, from the contractual terms. Penalties include a term of imprisonment up to two years or a fine up to 2,065 euro.

Pursuant to Article 516 of the Criminal Code, the sale of foodstuffs which do not comply with legal requirements as genuine is subjected to imprisonment up to six months or fine of up to 1,032 euro.

Article 517 of the Criminal Code forbids in general terms the sale of industrial products with false signs, providing that the sale or marketing of creative works or industrial products, bearing names, trademarks or distinctive signs which are liable to mislead the purchaser about the origin, source or quality of product, is punished with imprisonment up to one year or a fine of up to 20,000 euro, as the trademark's reputation is an essential reason for the consumer choice.

Article 517 *bis* of the Criminal Code provides that the penalties laid down in Articles 516 and 517 are increased if crimes are committed against foodstuffs or beverages whose geographical indication or appellation of origin are protected by law. In the above cases, the Court may order - based on the gravity of the offense or in the event of repeated offenses - the closure of the premises used to commit the crime from five days to three months, as well as the

revocation of the business license, authorization or any administrative measure enabling business operations.

Article 517 *quater* of the Criminal Code punishes with imprisonment up to two years and a fine of up to 20,000 euro counterfeiting or alteration of geographical indications or appellations of origin of agro-food products. The same penalty applies to the import, storage for sale, sale or circulation of the above products.

Actions and operations at national and international level

Italy conducts operations to combat counterfeiting, on a national and international scale. Law enforcement agencies engaged in the fight against food fraud publish annual activity reports. For instance, in 2015 Anti-fraud Units of Carabinieri, engaged in the fight against agro-piracy, have inspected 586 companies, seizing 722,837 kg of foodstuffs. 52 crimes and 273 administrative infringements were identified; while 52 people were reported to the judicial authorities. In 2014 the State Forestry Corps identified 206 offenses as a result of 9,744 food fraud-related inspections, resulting in the seizure of 209 tons of foodstuffs and 54,014 hectoliters of oil, dairy and wine products.

As for international actions, Italian law enforcement officials regularly participate in the joint Interpol-Europol Opson Operation since 2011, and most recently between November 2015 and February 2016. In the Italian market Operation Opson V led to the seizure of 85 tonnes of table olives, illicitly treated with copper sulfate to enhance their color.

Databases and statistics on counterfeiting and food fraud

As regards databases on enforcement activities against counterfeiting, Italy has developed the IPERICO system (Intellectual Property - Elaborated Report of the Investigation on Counterfeiting), under the supervision of the Ministry of Economic Development, Directorate General for Combating Counterfeiting (UIBM), which collects, harmonizes and aggregates data from all law enforcement agencies, including the Customs Administration, the Financial Police, the State and Local Police, as well as Carabinieri. IPERICO provides data and national statistics on the number of seizures, quantity and type of infringing products, the estimated value of the seized items and distribution throughout the country. Data are accessible online.

Furthermore, the Customs Administration has introduced F.A.L.S.T.A.F.F. (*Fully Automated Logical System Against Forgery Fraud*), a multimedia database of authentic products included in the Agency information system. The database allows comparing the features of the products suspected of counterfeiting with those of authentic goods. Company requesting Customs

intervention can upload a dossier detailing technical product information. The database also includes product images and its most common entry point on the domestic market.

The Financial Police has created an Anti-Counterfeiting System (*Sistema Anticontraffazione* - SIAC), a plurifunctional computerized platform made up of different applications, providing information for consumers, ensuring cooperation between institutional bodies, in particular between Police Forces, as well as between the enforcement agencies and right holders. SIAC also allows intellectual property right holder to share with law enforcement personnel data on products targeted by counterfeiters, including images, site features a section reserved to the enforcement agencies, gathering the relevant investigative information.

Moreover, Italy participates in the European Union databases to combat counterfeiting, the Enforcement Database (EDB) and Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Italian authorities provide information on seizures at the borders of articles suspected of infringing intellectual property rights.

With regard to databases on food fraud at European level, Italy is a member of the Rapid Alert System for Food and Feed (RASFF), consistently ranking first for the number of notifications submitted.

JORDAN

Intellectual property rights

Jordan is part of the WTO and has ratified several international conventions on the protection of intellectual property rights, including the TRIPS Agreement and the WIPO Copyright Treaty. Domestic intellectual property law recognizes Geographical indications, which are disciplined in Law 8/2000.

Trademarks are protected by Trademark Law 33/1952, detailing the registration procedures and specific rules on well-known trademarks.

Patents are disciplined in Law 32/1999, which defines the registration procedures and penalties for infringement.

Copyright and Related Rights are dealt with in Law 22/1992, which recognizes moral and economic rights to the author of a protected work.

Industrial Designs are disciplined in Law 14/2000.

Registration of intellectual property rights

Trademarks, patents, geographical indications and industrial designs must be registered with the Industrial Property Protection Directorate, within the Ministry of Industry and Trade.

As regards the protection of copyright and related rights, the authority in charge of the registration is the Department of the National Library, within the Ministry of Culture.

Sanctions regime

Geographical Indication Infringements

Law 8/2000 establishes civil remedies for infringements of the exclusive right to use a registered geographical indication. In particular, the legitimate right holder may file a complaint against the violation, request compensation for damages as well as the destruction or definitive withdrawal from the market of counterfeit products.

Article 433 of the Jordanian Criminal Code also punishes false allegations concerning the geographical origin of a product with imprisonment from one month to one year, when such origin is the main cause of the contracting party's consent.

Trademark Infringements

Article 38 of the Trademark Law provides that the use of a counterfeit trademark, the imitation or the illegal exploitation of a registered trademark, as well as the storage for sale of

goods bearing counterfeit trademarks, are punishable by imprisonment from three months to one year and a fine from 100 to 3,000 dinar (about 130 to 3,800 euro). The right holder may file a civil complaint to seek compensation for damages. The Court may also adopt interim injunctions, as well as order the seizure of crime proceeds, counterfeit goods and of the equipment used to commit the violation. Counterfeit products can be allocated for social purposes, insofar as the necessary measures to comply with intellectual property law have been taken.

Patent Infringements

Article 32 of Law 32/1999 provides that the exploitation of a patented invention, the sale, storage for sale and importation of patented products without the authorization of the legitimate patent holder is subjected to imprisonment from three months to one year, in addition to a fine from 100 to 3,000 dinar (about 130 to 3,800 euro).

The same punishment applies to false attribution of patent protection to an invention.

Industrial Design Infringements

According to Article 17 Law 14/2000, infringements of the exclusive right to use an industrial design registered in Jordan is considered a tort, not a criminal offense. The infringer may be sentenced to compensate the legitimate right holder for damages to the legitimate holder of the registered design. The Court may also order the seizure of counterfeit products and of the equipment used to commit the offense.

Copyright Infringements

Pursuant to Article 51 of Law 22/1992, violations of economic and moral rights of the copyright holder are punishable by imprisonment from three months to three years and a fine from 1000 to 6000 dinar (about 1,260 to 7,600 euro).

As a precautionary measure and pending the analysis on the merits of the case, according to Article 46, the Court may order the destruction of infringing copies and the seizure of the equipment used to commit the offense. Finally, the article 51b specifies that, in case of recidivism, the Court may mandate the closure of industrial premises up to one year and the suspension or permanent revocation of the offender's business license.

National Anti-Counterfeiting Authorities

The Jordanian Customs Administration, within the Ministry of Finance is in charge of collecting excise duties and can seize goods suspected of infringing intellectual property rights, either upon request of the right holder or *ex officio*.

The Intellectual property rights Section of the Security Directorate within the Ministry of Interior is responsible for the enforcement of intellectual property rights and for conducting related investigations.

Food safety

Competent authorities

The Ministry of Agriculture is responsible for the regulation of primary food production, environmental protection, fostering investments in agriculture and rural development, as well as for the prevention of animal and plant diseases and for conducting relevant scientific research.

The Jordan Food and Drug Administration has investigative powers and manages official controls on the hygiene conditions in food production facilities, premises and vehicles used for transport, import and export of food. It is also responsible for diseases and animal and human health.

Worth noting is the role of the High Committee for Food Control, an inter-ministerial body in charge of developing programs in the field of food security and organizing official controls.

The Jordan Institute of Standards and Metrology is responsible for defining food safety standards and ensures the alignment of Jordanian law with international standards.

Repression of food fraud

Food safety and the issues of food fraud are regulated in Law 30/2015.

In particular, Article 22 clarifies that the placing on the market of food products which are counterfeit or not-compliant with labeling requirements is punishable by a pecuniary fine from 1,000 to 5,000 dinar (about 1,260 to 6,320 euro). The same penalty is applicable in case business operations in the food sector are started without prior authorization by the public authority. Article 22 provides that the sale of adulterated foodstuffs is subjected to a fine from 3,000 to 5,000 dinar (about 3,790 to 6,320 euro). In case of recidivism, a prison term from three months to one year is applicable, along with a fine from 5,000 to 10,000 dinar (about 6,320 to 12,646 euro). Moreover, the Court may order the closure of industrial or commercial premises involved in illicit activities.

Equally prohibited is the placing on the market of foodstuffs unfit for human consumption, which is sanctioned with imprisonment from six months to three years and a fine from 3,000 to 5,000 dinar (about 3,790 to 6,320 euro). In case of recidivism, Law 30/2015 mandates a prison sentence from one to three years and a fine from 5,000 to 10,000 dinar (about 6,320 to 12,640

euro). Furthermore, the Court may order the closure of industrial or commercial premises used to commit the crime.

Non-compliance with a judicial order mandating the temporary or permanent closure of the above premises is a criminal offense punishable by imprisonment from six months to one year. Finally, Article 24 of Law 30/2015 specifies that, if food fraud resulted in serious bodily harm, or in the death of the victim, the penalties provided for by the Jordanian Criminal Code in cases of injury or murder are applicable.

Actions and operations at national and international level

Jordan conducts anti-counterfeiting operations on a national scale, such as the seizure of a shipment of counterfeit medicines in 2013 by customs agents at the border with Saudi Arabia. At international level in 2014/15 Jordan has participated in Operation Opson IV, jointly coordinated by Interpol and Europol.

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available.

LEBANON

Intellectual property rights

Lebanon is not a member of the WTO and has not signed the TRIPS Agreement. Yet it has signed numerous international conventions on the protection of intellectual property rights, including: the Singapore Treaty on the Law of Trademarks (signed on December 5, 2006, but not yet ratified), the Patent Cooperation Treaty (signed on June 2, 2000, but not yet ratified), the Berne Convention for the protection of literary and artistic works (1947).

The legal framework on intellectual property rights is contained in Resolution No. 2385 of 1924 on industrial and commercial property rights, amended in 2005, which disciplines trademark law. Patents are protected in Law 240/2000, whereas the protection of rights in literary and artistic works is defined in Law 75/1999. Finally, specific provisions on intellectual property rights are included in Decree 4461/2000 on Customs.

The current legal system does not provide protection to geographical indications. To address this issue the Lebanese government acceded in 2004 to a bilateral technical assistance program with Switzerland, in the framework of the European Free Trade Association (EFTA), which led to the drafting of the Bill for the protection of geographical indications, currently awaiting parliamentary approval. The draft law recognizes geographical indications, designations of origin and traditional names.

Registration of intellectual property rights

Trademarks, patents, designs and copyright must be registered with the Office of Intellectual Property, within the Ministry of Economy and Trade.

The draft law on the protection of geographical indications confers to the same office the registration of geographical indications, upon request of an association of producers, representing the relevant industry according to two criteria: 1) the association must include at least 50% of the production volume and 2) it must enroll at least 50% of producers or workers.

Applications may also be submitted by natural or legal persons who are the only manufacturer of a certain good in a specific area.

Sanctions regime

Deliberate infringements of intellectual property rights amount to criminal offences in Lebanon. Civil remedies, such as compensation for damages, are also provided. The Court may also issue interim injunctions and evidence preserving measures pending the analysis on the merits of the case. However, the private sector raises concerns over the general conversion of prison terms

in pecuniary fines. As for civil remedies, the determination of damages is reported not to follow objective criteria and the awarded amount is relatively low. Further difficulties in securing monetary compensation may arise due to the bankruptcy of the convicted party.

Geographical Indication Infringements

Article 20 of the draft Law prohibits the use of a registered geographical indication to designate identical or similar goods in commercial activities, in a way that could mislead the consumer as to the origin of the product. Equally prohibited is any imitation of a protected quality scheme to designate products which originate from a different area, even if the actual origin of the product is specified or if the name is accompanied by terms such as "type", "style", "method", "imitation" or similar. The same restrictions apply to imitations of product shape, packaging or advertising material which may mislead the public as to its origin.

According to Article 27, infringements are punishable by imprisonment from three months to three years and a fine from 5,000,000 to 50,000,000 lira (about 2,960 to 29,660 euro).

Trademark Infringements

Article 702 of the Criminal Code states that the infringement of a registered trademark, its illegal use to designate third-party products, as well as the sale and / or placing on the market of products bearing a counterfeit or imitated trademark, are subjected to imprisonment from three months to three years, and to a fine ranging from 100,000 to 1,000,000 lira (about 60 to 600 euro).

It is worth noting that Article 55 of the draft Law on Trademarks punishes trademark infringements with a fine from 5,000,000 to 50,000,000 lire (about 3,000 to 30,000 euro).

Patent Infringements

The law confers to the patent holder the exclusive right of commercial exploitation on the invention. According to Article 42 of Law 240/2000, the illicit exploitation of an invention relating to a product or to a patented process is sanctioned with imprisonment from three months to three years and a fine from 5,000,000 to 50,000 000 lira (about 3,000 to 30,000 euro). Article 46 clarifies that the offender is also liable for monetary and moral damages, for the loss of earnings and must refund unduly acquired profits.

Industrial Design Infringements

As anticipated, amendments to the legal regime of industrial designs in Lebanon are currently underway, in the context of a comprehensive reform of intellectual property laws.

Article 49 of the draft law on the protection of industrial designs provides for a fine from 5,000,000 to 50,000,000 lira (about 2,960 to 29,660 euro) for infringements of registered industrial designs or models, along with a prison term from two months to two years.

Copyright Infringements

Law 75/1999 recognizes to the author of an intellectual work economic and moral rights. Pursuant to Article 86 of Law 75/1999, deliberate copyright infringements are punishable by imprisonment from one month to three years and a fine from 5,000,000 to 50,000,000 lire (about 3,000 to 30,000 euro). As an accessory penalty, the Court may order the closure of industrial or commercial premises used to commit the offense from one week to one month, as well as the destruction of pirated products and of the equipment used to commit the offense.

National Anti-Counterfeiting Authorities

The Lebanese Customs Administration within the Ministry of Finance may seize goods suspected of violating intellectual property rights, acting either upon request of the right holder or *ex officio*.

However, private sector representatives raise concerns over the limited effectiveness of border measures, which are generally deployed only in case of large-scale violations or for the protection of well-known trademarks.

The Cyber-Crime and Intellectual Property Rights Bureau, within the Criminal Police Department is tasked with investigations on intellectual property infringements.

The National Committee for Intellectual Property Rights in Lebanon is a coordination body, bringing together representatives of national authorities, international organizations, private sector and academia, and conducts awareness campaigns on the issue of infringement of intellectual property rights.

Food safety

Competent authorities

The protection of food safety is attributed to several public bodies, generating a potential overlap and lack of coordination. Moreover, food fraud scandals have emphasized shortcomings in the official control system.

A new Law on Food Safety provides for the establishment of the Lebanese food safety Commission, made up of experts with different expertise and in charge of regulating the sectors of agriculture, import, export, packaging, storage and sale of food products, risk management in case of emergencies, analysis and official food safety controls.

Repression of food fraud

Sanctions related to food fraud are foreseen in Law 659/2005 on consumer protection, which in Article 109 mandates that intentional alteration of ingredients in foodstuffs or feed is punishable by imprisonment from three months to one year and a fine of 25 million to 50 million lira (about 15,000 to 30,000 euro). If the crime results in serious bodily harms, the prison term ranges from one to three years and the fine from 50 million to 75 million lira (about 30,000 to 45,000 euro). Should the crime result in the death of a victim, the prison term is increased from three to ten years and the fine from 75 million to 150 million lira (about 45,000 to 90,000 euro).

Actions and operations at national and international level

Lebanon conducts operations against counterfeiting at the national level, which are not, however, given significant public evidence. Significant has been a large scale seizure of counterfeit psycho-stimulants and drugs intended for export in 2013, worth 5,000,000 US dollars. Similarly, in May 2015 a container of altered ice cream was seized, in light of the danger to public health.

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available.

MALTA

Intellectual property rights

Malta is a member of the EU and of the WTO.

It has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Patent Cooperation Treaty, the Trademark Law Treaty and the WIPO Copyright Treaty.

Domestic legislation on intellectual property rights protects:

Geographical indications: the Maltese legislative framework consists of Regulation (EU) No. 1151/2012 on geographical indications for agricultural and food products, in addition to national Regulation 427.52 / 2004.

Trademarks: the exclusive rights of the owner of a registered trademark are disciplined by the Trademark Act (2007), which defines the registration procedures and recognizes well-known marks.

Patents and industrial designs: as per the Patent and Design Act (2007).

Copyright and Related Rights: regulated in the Copyright Act, Chapter 415 (2000), as amended by the Act No. VIII of 2011.

Remedies against violations of intellectual property rights are specified in the Enforcement of Intellectual Property Rights (Regulation) Act (2006).

Registration of intellectual property rights

The National Intellectual Property Office of Malta, within the Ministry for Fair Competition, Small Business and Consumers is in charge of the protection of copyright and related rights, as well as of trademarks, patents and industrial designs registration.

Geographical indications can be protected upon request of any association of producers or processors working with specific agricultural products or foodstuffs and must be addressed at the Malta Competition and Consumer Affairs Authority (MCCAA).

Within six months, the institution may forward admissible applications to the Commission for a final decision, or reject it.

Sanctions regime

The Maltese legal system provides for civil and criminal remedies against intellectual property rights infringements. The former include compensation of damages to the right holder, the

provision of interim injunctions and evidence preserving measures along with the seizure of counterfeit goods and of the equipment used to commit the crime.

Upon conviction, the Court may also order the suspension or permanent revocation of the business license and impose a deadline to redress the consequences of the crime, on pain of a monetary sanction of 116.47 euro for each day of delay.

Geographical Indication Infringements

In compliance with EU law, Malta protects geographical indications, designations of origin and traditional specialties guaranteed. Upon registration, these indications cannot be used to designate products or services whose quality, reputation or characteristics are below levels associated to a registered quality scheme, or to identify different kinds of merchandise, not protected by the registration. In addition, Article 298 paragraph e of the Maltese Criminal Code punishes by imprisonment from four months to one year misrepresentations of a product through false references, which are normally used in commercial practices to identify the place or State of origin of the goods.

Trademark Infringements

Article 72 of the Maltese Trademark Law clarifies that the unauthorized use on products or packages of a sign identical or similar to a registered trademark; along with the sale, rental and distribution of goods or packaging bearing a counterfeit trademark is subjected to a three years prison term or a fine up to 23,293.73 euro. The same penalties are provided for the production, custody and control of equipment for the production of counterfeit trademarks.

According to Article 73 of the Trademark Law, the false representation of a sign as a registered trademark in the national register, as well as the production of, or aiding and abetting the production of signs that fraudulently imitate a registered trademark, are liable to a penalty imprisonment up to two years and a fine of up to 11,646.87 euro.

Finally, pursuant to the combined provisions of Articles 76 and 81 of the Trademark Law, the Court may order the seizure and delivery to the trademark owner of counterfeit goods and of the equipment used to commit the crime. As an alternative, infringing goods may be destroyed or allocated for social purposes after the removal of counterfeit signs.

Patent Infringements

The Maltese Law recognizes to the inventor the exclusive right to commercially exploit the invention. Pursuant to Article 50 of the Patent and Designs Act, the false representation of a product as subject to patent protection for the purpose of sale is punishable by a fine from 232.94 to 11,646.87 euro, as well as by the seizure of infringing products.

Industrial Design Infringements

Article 117 of the Patent and Designs Act punishes the unauthorized use of a registered design for profit-making purposes by imprisonment up to three years and a fine up to 23,293.73 euro. The Court may inflict only the payment of the fine or a prison sentence, based on the gravity of the offense. Article 118 also prohibits the supply of false information and evidence in the national register of designs and industrial models, which is subjected to imprisonment up to two years and a fine up to 11,646.87 euro. According to the circumstances of the case, the Court may inflict only the payment of the fine or a prison sentence.

Copyright Infringements

Article 298b of the Maltese Criminal Code establishes that the unauthorized printing, production, duplication, or any reproduction or copying, sale, distribution or offer for sale of a protected work, in breach of copyright, is subjected to imprisonment up to one year or to a fine up to 11,646.87 euro. Furthermore, Article 43 of the Copyright Act specifies that the offender must compensate monetary damages and refund unduly acquired profits.

National Anti-Counterfeiting Authorities

The Maltese Customs Administration (Department of Customs), within the Ministry of Finance monitors the collection of customs duties, excise duties and other taxes.

Moreover, it can seize goods suspected of violating intellectual property rights, either upon request of the right holder or *ex officio*, in accordance with Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities. Its tasks are described in the Intellectual Property Rights (Cross-Border Measures) Act.

Within the Maltese Police Force, the Economic Crimes Unit is in charge of conducting investigations and inspections -among others - on intellectual property rights violations, fraud, cases of counterfeiting. However, a specific unit dedicated exclusively to infringements of intellectual property rights is not currently operational.

Food safety

Competent authorities

Several Directorates within the Ministry for Sustainable Development, the Environment and Climate Change are in charge of controls and inspections to ensure food and feed safety, and animal and plant health.

The Ministry of Health develops rules on import, export, preparation, composition, advertising, sale, disposal and destruction of food products, and establishes the minimum standards of safety and quality.

The Food Safety Commission is responsible for monitoring, coordinating and examining food safety related matters. It is also tasked with the implementation of legal provisions and standards related to food safety

The Malta Competition and Consumer Affairs Authority, instead, is mandated to assess European legislation on food and plant protection products, and elaborates guidelines on good hygiene practices. It also deals with the labeling of foodstuffs and contact materials, as well as with risks arising from chemical additives and contaminants.

Repression of food fraud

Malta complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 852/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

Maltese legislation disciplines food fraud in Part IV of the Food Safety Law of 2002. At the outset, Article 11 prohibits engagement in commercial activities in the food sector, without the prior operator's registration with the Ministry of Health.

Article 12 forbids any intentional adulteration of food products intended for human consumption.

Moreover, the combined provisions of Articles 14 and 23 of the Food Safety Law prohibit the sale, supply, advertising or storage for sale, or the preparation, storage, delivery and import of any food products harmful to health, unfit for human consumption or heavily contaminated. Equally forbidden are violations of hygiene standards during production, storage, transport and sale of food products.

To ensure consumer protection, Article 16 prohibits the manufacture, sale, storage, and offer for sale or advertising of any food product which is identical or similar in appearance to any article of common use for which it might be mistaken, with the ensuing health risks. In general terms, Article 17 of the Food Safety Law prohibits the sale of any food intended for human consumption which is not of the nature, substance or quality of the food demanded by the purchaser. Article 18 also punishes the supply of information through labels or advertising material, falsely describing the food and which is likely to mislead as to the nature, substance or quality of the food. Article 31 regulates the measures to be adopted in case food products which are unfit for human consumption, or otherwise likely to cause damage to health, are identified during official controls. The competent public authorities may, in particular, order to the food business operator that the product in question cannot be sold and must be destroyed at the expense of the responsible person, unless it or any sample thereof needs to be produced as evidence in Court. According to Article 43, obstructions to official controls for food safety are punishable by a fine from 465.87 to 2329.37 euro or by imprisonment up to six months. Article 43 paragraph 3 finally mandates a fine from 465.87 to 4,658.75 euro or imprisonment up to two years for violations of other provisions of the Food Safety Law.

Actions and operations at national and international level

Malta conducts operations against counterfeiting at national level: for example, in July 2013, the authorities were able to identify and confiscate 200,000 contraband cigarettes, while in February of the same year customs officials have seized more than 5,000,000 contraband cigarettes and 1,400 bottles of counterfeit alcohol.

According to the Report on EU customs enforcement of intellectual property rights, published by the Directorate-General for Taxation and Customs Union - DG TAXUD, in 2014 the Maltese Customs Administration seized 5,238,065 counterfeit goods at national borders, an increase of 197 % compared to 2013.

Databases and statistics on counterfeiting and food fraud

Malta participates in the databases of the European Union for the fight against counterfeiting, the Enforcement Database (EDB) and the Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Maltese authorities provide information on seizures at the borders of articles suspected of infringing intellectual property rights. As for food fraud, Malta participates in the EU Rapid Alert System for Food and Feed. The RASFF 2015 Annual Report shows that notifications submitted by the Maltese authorities have decreased from 38 in 2007 to 13 in 2015.

MOROCCO

Intellectual property rights

Morocco is a member of the WTO and has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement (1994), the Lisbon Agreement for the Protection of Appellations of Origin and their international registration (1958), the WIPO Copyright Treaty (1996), the Trademark Law Treaty and the Patent Cooperation Treaty (1970).

Moroccan law protects intellectual property rights, namely trademarks, patents, copyrights, industrial designs and appellations of origin for food products.

In particular, industrial property rights are governed by Law 17-97/2000 and subsequent amendments, most recently Law 23-13/2014, which regulates trademarks, patents, general principles on geographical indications and appellations of origin for goods and services, industrial designs, as well as the topography of semiconductor products.

The detailed regulations on distinctive signs of origin and quality for food, agricultural and fishery products are contained in Law 25-06/2008, which distinguishes between geographical indications and appellations of origin. Copyright is disciplined in Law 2/2000.

Registration of intellectual property rights

The registration of trademarks, patents and industrial designs is entrusted to the Moroccan Office of Industrial and Commercial Property (*Office Marocain de la Propriété Industrielle et Commerciale* - OMPIC).

The protection of copyright, as well as the collection of royalties accruing to the authors, are ensured by the Moroccan Copyright Office (*Bureau Marocain du Droit d'Auteur* - BMDA).

Geographical indications and appellations of origin are attributed by the Moroccan Industrial and Commercial Property Office, with the approval of the National Commission of Distinctive Signs of Origin and Quality (*Commission Nationale des Signes Distinctifs d'Origine et de Qualité*). Related data are published on a national register of geographical indications and appellations of origin maintained by OMPIC.

Sanctions regime

As for the prosecution of intellectual property rights infringements, the private sector advocates strengthening the specialization of Courts, in order to ensure fair trials. The length and cost of legal proceedings are also significant challenges. Moreover, prison terms are rarely

inflicted, but rather converted in monetary fines. The deterrent effect of penalties may therefore be improved.

Geographical Indication Infringements

Pursuant to Article 37 of Law 25-06/2008 violations of the exclusive right to use distinctive signs of origin and quality for food, agricultural and fishery products are punishable by a fine of 50,000 to 500,000 dirham (about 4,610 to 46,100 euro). Illicit conducts include the use of a quality scheme to designate products which do not enjoy the right to the certification, or do not comply with product specification. The same penalty applies to any certification body which operates without the prior approval of the National Commission of the Distinctive Signs of Origin and Quality for Food.

Article 38 mandates a fine from 5,000 to 50,000 dirham (about 460 to 4,610 euro) for the unlawful use of a geographical indication or a registered designation of origin, so as to mislead consumers as to the nature, quality or the true origin of a product.

While penalties imposed for such offenses align with sanctions provided for violations of other intellectual property rights, the law does not mandate prison terms in case of geographical indications' infringements.

Trademark Infringements

Article 225 of Law 23-13/2014 mandates a term of imprisonment from three months to one year, and a fine from 100,000 to 1,000,000 dirham (about 9,230 to 92,300 euro) for cases of counterfeiting and illicit use of a trademark. The same penalties apply to the deliberate storage, sale, supply, import and export of articles or packaging bearing a counterfeit trade mark.

In compliance with Article 226 of Law 23-13/2014, the imitation and use for commercial purposes of a trademark which, although not counterfeit, is likely to mislead the consumer as to the nature, substantial quality, composition, species or origin of the product, is subjected to a fine from 50,000 to 500,000 dirham (about 4,610 to 46,100 euro), or to imprisonment from two to six months.

Pursuant to Article 228 of Law 23-13/2014, the Court may also order the confiscation of the equipment used to commit the offense and the destruction of counterfeit goods.

Patent Infringements

According to Article 213 of the Law 23-13/2014, patent infringements are sanctioned with imprisonment from two to six months, or a fine from 50,000 to 500,000 dirham (about 4,610 to 46,100 euro). In case of recidivism, monetary fines may be doubled, while imprisonment ranges from three months to two years. The same punishment applies to complicity in the crime

through the deliberate storage, offer for sale, sale, import or export of counterfeit products, as clarified in Article 214 of Law 23-13/2014. In compliance with Article 215, if the offender is an employee of the patent holder, the monetary penalty ranges from 100,000 to 500,000 dirham (about 9,210 to 46,080 euro) or imprisonment from six months to two years. The Court may also order the confiscation of the equipment used to commit the offense and the destruction of counterfeit goods.

Industrial Design Infringements

Article 221 of Law 23-13/2014 provides that infringements of registered industrial models or designs are punishable by imprisonment from two to six months, as well as by a fine from 50,000 to 500,000 dirham (about 460 to 4,610 euro). In case of recidivism, both the prison term and the monetary fines may be increased up to the double. The Court may order the destruction of infringing products and of the equipment used to commit the crime.

Copyright Infringements

According to Article 64 of Law 2/2000, the illicit exploitation of an intellectual or artistic work protected by copyright is subjected to imprisonment from two to six months, or to a fine from 10,000 to 100,000 dirham (about 920 to 9,200 euro). The same penalties apply to the import and export of pirated products. In the event of recidivism within five years from the conviction, Article 64.2 Law 2/2000 mandates a prison term from one to four years and a fine from 60,000 to 600,000 dirham (about 5,530 to 55,300 euro). As an accessory penalty, the Court may order the seizure and destruction of pirated products and the equipment used to commit the offense, without prejudice to the possibility of alternative allocation thereof, based on the Court's assessment and in compliance with Copyright law. Finally, the Court may order the temporary or permanent closure of industrial or commercial premises involved in copyright infringements. Pursuant to Article 65 of Law 2/2000, the same penalties apply to the circumvention of technological protection measures adopted by the author.

National Anti-Counterfeiting Authorities

The Moroccan Customs Administration (*Administration des Douanes et Impôts Indirects*), within the Ministry of Economy and Finance, may seize products suspected of violating intellectual property rights.

In case of irregularities in import or export procedures, customs officials may intervene either upon request of rights holders or *ex officio*. Following *ex officio* actions by Customs authorities, the legitimate right holders must file a complaint against the infringer or request an interim injunction. Despite this obligation, border measures are reported to be effective by legitimate

right holders, which refer to cooperate efficiently with the Customs authorities, in particular as regards trademark infringements.

The National Committee for Industrial Property and Anti-Counterfeiting (*Comité National pour la propriété industrielle et Anti-Contrefaçon* - CONPIAC) has been founded in 2008. Chaired by the Ministry of Industry and Trade, the CONPIAC brings together in two working groups public bodies and private companies involved in combating counterfeiting. The CONPIAC exercises an advisory role in drafting IP-related laws, conducts studies and raises public awareness of the impact of counterfeiting in Morocco.

From an operational standpoint, the General Directorate of National Security (*Direction générale de la Sûreté nationale* - DGSN), within the National Police at the Ministry of Interior, is tasked with investigating cases of counterfeiting, jointly with the Royal Gendarmerie (*Gendarmerie Royale Marocaine*).

Food safety

Competent authorities

The National Office for the Security of Food Products (*Office Nationale de la Sécurité Sanitaire des Produits Alimentaires* - ONSSA), under the supervision of the Ministry of Agriculture, is tasked with ensuring food safety in Morocco. Established by Law 25- 08/2009, the Office assesses the compliance of food and feed products with national hygiene and labeling standards. The Office can inspect both domestically produced and imported foodstuffs and awards administrative authorization required to engage in food business operations.

Repression of food fraud

The Moroccan legal framework on food fraud includes Law 13-83/1984, on measures against commercial fraud, and Law 28-07/2010 on the safety of food products.

Article 1 of Law 13-83/1984 defines commercial fraud as any conduct intended to mislead the contracting party on the substance or the amount of goods agreed upon. Article 2 of Law 13-83/1984 specifies that fraud which is likely to cause a risk to human or animal health, or the placing on the market of products derived from livestock suffering from contagious or transmissible diseases are punished with imprisonment from one to ten years and a fine from 2,400 to 48,000 dirham (about 220 to 4,420 euro).

According to Article 5 Law 13-83/1984 the adulteration of food, beverages and agricultural products or feed intended for human or animal consumption, as well as the deliberate import, manufacture, offer for sale, sale and the distribution thereof, are punishable by imprisonment from six months to five years and a fine from 1,200 to 24,000 dirham (about 110 to 2,210 euro). The same penalties are provided for the import, manufacture, offer for sale and distribution of

food products illicitly treated with chemical or biological substances, or exposed to radiation, irrespective of the aim of the treatment. Article 5 also prohibits the use of food contact materials not expressly authorized by law. For the sake of prevention, Article 6 of Law 13-83/1984 punishes with imprisonment from six months to five years and a fine from 1,200 to 24,000 dirham (about 110 to 2,210 euro) the intentional storage, in industrial or commercial premises, on the part of food business operator of adulterated or toxic food products, beverages, and feed, along with any equipment used to carry out food fraud.

With reference to the agro-food sector, of great importance are the provisions of Title IV of Law 28-07/2010 concerning the safety of food products.

In particular, Article 25 states that the placing on the market, import and export of foodstuffs or feed presenting a risk to human or animal health, is punishable by imprisonment from two to six months and a fine from 50,000 to 100,000 dirham (about 4,600 to 9,210 euro). The same penalties apply to the manufacture, placing on the market and the distribution of foodstuffs or feed from operators which have not obtained the administrative authorization to engage in the food business or do not comply with hygiene rules.

Pursuant to Article 25, food business operators who are aware or have reasonable grounds to believe that foodstuffs or feed do not meet health and safety requirements, must inform the public authorities, to facilitate the adoption of precautionary measures, including restrictions on the sale or withdrawal of products from the market. Non-compliance engages criminal liability and is sanctioned with imprisonment up to six months and/or a fine from 50,000 to 100,000 dirham (about 4,600 to 9,210 euro).

Article 26 specifies then that the placing on the market, import and export of foodstuffs in breach of laws or regulations on food labeling, as well as failure to withdraw from the market infringing products, in defiance of an order from the public authority, are subjected to a fine from 5,000 to 20,000 dirham (about 460 to 1,840 euro).

Finally, Article 28 of Law 28-07/2010 protects the integrity of official controls on food safety, mandating a prison term from fifteen days to six months and a fine from 5,000 to 100,000 dirham (about 460 to 9,210 euro) for illicit interference or obstructions.

Actions and operations at national and international level

Morocco has participated in international law enforcement operations against counterfeiting, in particular Operation Sirocco coordinated by OLAF, and Operation Biyela, directed by the World Customs Organization.

Databases and statistics on counterfeiting and food fraud

The CONPIAC provides information about seizures of counterfeit products at Moroccan borders from 2006 to 2014. In particular, out of 838 interventions, 271 were carried out in 2014 and resulted in the seizure of 7,349,000 counterfeit items, compared with 3,315,000 identified in 2013. The market value of seized goods in 2014 amounted to 105,600,000 dirham (9,700,000 euro) compared to 92,000,000 dirham (about 8,450,000 euro) recorded in 2013.

As for the agro-food sector, according to the latest available data, in 2012 the Moroccan authorities have seized about 120,000 counterfeit or adulterated food products, for a market value of 2,723,910 dirham (about 253,300 euro).

PORTUGAL

Intellectual property rights

Portugal is a member of the EU and of the WTO.

It has ratified several international conventions on the protection of intellectual property rights, including the TRIPS Agreement (1994), the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), the WIPO Copyright Treaty (1996), the Trademark Law Treaty, the Patent Cooperation Treaty (1970) and the Patent Law Treaty (2000). The domestic law protects trademarks, patents, copyright, industrial models and designs, as well as geographical indications and appellations of origin for food products.

In particular, industrial property rights are disciplined by Decree-Law 36/2003 - the Industrial Property Code - which regulates trademarks, patents, geographical indications and appellations of origin, designs and industrial models, as well topographies of semiconductor products. Law 16/2008 aims at ensuring the enforcement of intellectual property rights and specifies the remedies available to the right holder in case of violation. The discipline of copyright is contained in the Code of Copyright and Related Rights, Law 45/1985.

Registration of intellectual property rights

The registration of trademarks, patents and industrial designs is attributed to the National Institute of Industrial Property (*Instituto Nacional da Propriedade Industrial*).

The protection of copyright, as well as the collection of royalties accruing to the authors, are ensured by the Office of Strategy, Planning and Cultural Evaluation (*Gabinete de estratégia, Planeamento and Avaliação Culturais* - GEPAC).

Exclusive rights on geographical indications and appellations of origin for food products are attributed by the Directorate-General for Agriculture and Rural Development (*Direcção-Geral de Agricultura and Rural Development* - DGADR), within the Ministry of Agriculture, Forests and Rural Development (*Ministério da Agricultura, Florestas and rural Development*). Information is then published on a national register of geographical indications and designations of origin, maintained by the Portuguese Institute of Industrial Property.

Sanctions regime

It is worth noting that Article 47 of the Portuguese Criminal Code establishes monetary fines from 5 to 500 euro, to be inflicted in criminal trials based on the economic condition of the convicted person. The amount must be paid daily, from 10 to 360 days.

Willful intellectual property infringements are criminally prosecuted in Portugal. Civil remedies, such as the compensation of damages, are also available. The Court can also issue interim injunctions or evidence preserving measures pending the analysis of the merits of the case.

However, the private sector raises concerns over the necessary time to obtain the enforcement of a verdict mandating the seizure of counterfeit goods, carried out by the competent administrative authority - the ASAE, as especially in Lisbon, the procedure may take up to 8-12 months.

Significant challenges are also the leniency of sanctions generally inflicted in criminal trials for counterfeiting, as well as the usual conversion of prison terms into monetary fines.

As for civil remedies, business operators complain about the general award of compensations equivalent to the cost of a license from the right holder, rather than a specific evaluation on a case by case basis.

Geographical Indication Infringements

The reproduction and imitation, in whole or in part, of registered geographical indications and appellations of origin is punishable by imprisonment up to three years, and by a monetary fine to be paid up to one year, as required by Article 325 Industrial Property Code. The same penalty applies to the unauthorized use of registered geographical indications and appellations of origin, or the reproduction or imitation thereof, to designate merchandise not compliant with product specifications, even if the true origin of products is specified, or the sign is accompanied by terms such as "style", "type", "quality" and the like.

Trademark Infringements

Article 323 of the Industrial Property Code punishes counterfeiting of a trademark, the total or partial imitation thereof, and the use of a counterfeit or imitated trademark, by imprisonment up to three years and a fine to be paid up to one year. The same penalty applies to the illicit use of a registered trade mark for products, services or companies pertaining to the convicted party.

Finally, Article 324 of the Industrial Property Code specifies that the sale and intentional storage of counterfeit goods is subjected to imprisonment up to one year and a fine up to 120 days.

Patent Infringements

According to Article 321 of the Industrial Property Code, infringements of the exclusive of economic exploitation of the patent holder are subjected to imprisonment up to three years, and a fine to be paid up to one year. The same sanctions apply to the unauthorized import and distribution of products obtained directly from a patented process.

Industrial Design Infringements

Article 322 of the Industrial Property Code prohibits unauthorized total or partial reproduction of the characteristics of a registered design, as well as the exploitation, importation and distribution of products incorporating such design. Violations are punishable by imprisonment up to three years, and a fine to be paid up to 360 days.

Copyright Infringements

Pursuant to the combined provisions of Articles 195 and 197 of the Code of Copyright and Related Rights, the unauthorized disclosure of a work prior to its publication by the author, as well as the violation of the license terms, amount to copyright usurpation, subjected to imprisonment up to three years, and monetary fines to be paid from 150 to 250 days.

The same punishment applies to counterfeiting, which consists in performing any act reserved to the author of an intellectual work protected by law, according to Article 196 of the Code of copyright and related rights. The penalties provided for in Article 197 are also applicable to the infringement of the author's moral rights, as well as to the sale, importation and exportation of pirated products, both in Portugal and abroad, as clarified by articles 198-199 of the Code of copyright and related rights. In case of recidivism, the penalties may be doubled.

The intentional circumvention of technological protection measures is subjected to imprisonment up to one year and a fine up to 100 days.

It is worth noting that pursuant to Articles 330 of the Code of Industrial Property and 201 of the Code of copyright and related rights, counterfeit or pirated products are always seized, along with the equipment used to commit the offense.

National Anti-Counterfeiting Authorities

The Portuguese Customs Administration (*Autoridade Tributaria and Aduaneira*), within the Ministry of Economy (*Ministério da Economia*) is in charge of collecting excise duties and other taxes. Moreover, in accordance with Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities, it can seize goods suspected of violating intellectual property rights, both upon request of the right holder or *ex officio*.

The Anti-Counterfeiting Group (*Grupo Anti-Contrafacção*) is an inter-ministerial body which coordinates the initiatives adopted by different public authorities for intellectual property protection. It manages a website detailing information on the phenomenon of counterfeiting and allows citizens to report violations of intellectual property rights.

The Republican National Guard (*Guarda Nacional Republicana*) and the Police (*Polícia de Segurança Pública*) are instead tasked with conducting searches and investigations against counterfeiting in industrial and commercial premises.

Food safety

Competent authorities

The Ministry of Agriculture, Forestry and Rural Development (*Ministério da Agricultura, Florestas and Rural Development* - MAFDR) defines agricultural and agro-food policies, through its Directorate-General for Agriculture and Rural Development (*Direcção-Geral de Agricultura e Desenvolvimento Rural* - DGADR), which is in charge of the preparation and implementation of control plans for quality systems, including organic farming, PDO, PGI and TSG.

Equally important is the General Directorate for Food Products and Veterinary (*Direcção-Geral de Alimentação and Veterinária* - DGAV), which is responsible for feed safety, veterinary medicines, animal health, hygiene and safety of food products of animal origin. The DGAV is the national focal point for the EU rapid alert system for food and feed. Through its Directorate for Nutrition and Food (*Direcção de Serviços de Nutrição and Alimentação* - DSNA) it performs inspections on food of non-animal origin, food additives, contaminants and food contact materials.

The Authority for Food and Economic Security (*Autoridade de Segurança Alimentar and Económica* - ASAE) within the Ministry of Economy is the competent body for the performance of official controls on food safety. The ASAE carries out inspections at industrial and commercial premises.

Repression of food fraud

Portugal complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 852/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

Portuguese law provides for two categories of food fraud, subjected respectively to administrative or criminal penalties, based on the gravity of the offense. Administrative offenses are regulated in Decrees-Law 560/1999 and 113/2006, both issued by the Ministry of Agriculture.

According to Article 28 Decree-Law 560/1999, non-compliance with labeling requirements of food products, as well as trade in products after the expiration date, are subjected to an administrative penalty up to 3,740.98 euro for natural persons, and up to 44,891.81 euro for legal persons.

Article 6 of Decree-Law 113/2006 provides a detailed list of violations of health standards for foodstuffs laid down in Regulations (EC) No. 852/2004 and (EC) No. 853/2004. In general terms, food business operators must ensure that all stages of production, processing and distribution of foodstuffs meet hygiene standards.

For instance, reference is made to the requirements of Articles 3 and 4 of Regulation (EC) No. 852/2004, namely: compliance with microbiological criteria for foodstuffs, with procedures necessary to achieve the objectives of food hygiene, temperature control, maintenance of the cold chain, sampling and analysis. Special emphasis is placed on compliance with the HACCP protocol (*Hazard Analysis and Critical Control Points*) by food business operators carrying out any stage of production, processing and distribution, as well as on regular inspections on food business operators.

Article 6 of Decree-Law 113/2006 also prohibits the import on the domestic market and the export of products not compliant with the provisions of Articles 10 and 11 of Regulation (EC) No. 852/2004, which refer to the rules laid down in Articles 3-6 of the same Regulation (EC) No. 852/2004. They indicate general and specific requirements in terms of hygiene, respect for HACCP protocol, as well as on official controls, registration and approval of economic operators in the agro-food sector.

The above conducts are punishable by fines from 500 to 3,740 euro for natural persons, and up to 44,891.81 euro for legal persons.

Pursuant to Article 282 of the Criminal Code the intentional alteration of the nutritional values of foods and beverages for human consumption is prohibited at any stage of the distribution chain. If the conduct results in damage to life or human health, the prison term ranges from one to eight years. If the act results in the death of the victim, the prison sentence may be increased by one third.

Actions and operations at national and international level

Portugal has participated in international law enforcement operations against counterfeiting, notably to Operation Opson IV, headed by Interpol and Europol. In this context, Portuguese

authorities seized 19,700 kg of meat, 13,400 kg of fish products, 1,200 kg of fruit 809 kg of dairy products.

Overall, in 2014 the Portuguese authorities have confiscated 3,041,938 counterfeit products, 70% of which are apparel and accessories. Significant is also the number of labels and trademarks illegally reproduced and intended to be posted on clothing, approximately 1,700,000 units. In total, the value of counterfeit goods seized in the country in 2014 exceeds euro 9,000,000.

Databases and statistics on counterfeiting and food fraud

The Anti-Counterfeiting Group manages a national database on seizures of counterfeit goods. According to available data, updated in 2014, the economic sectors most exposed to counterfeiting in Portugal are apparel and products for personal hygiene. In particular, in 2014 the Portuguese authorities seized about 2.5 million articles of clothing and 160,000 counterfeit products for the personal hygiene. With respect to the agro-food sector, in the same year approximately 90,000 counterfeit or adulterated food products have been seized.

Portugal contributes to the databases of the European Union for the fight against counterfeiting, the Enforcement Database (EDB) and Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Portuguese authorities provide information on seizures, both at the border and in the internal market, of articles suspected of infringing intellectual property rights. As for food fraud, Portugal participates in the EU Rapid Alert System for Food and Feed (RASFF). The RASFF 2015 Annual Report reveals that the notifications submitted by the Portuguese authorities have increased from 25 in 2007 to 30 in 2015.

ROMANIA

Intellectual property rights

Romania is a member of the EU and of the WTO.

It has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), the WIPO Copyright Treaty (1996), the Trademark Law Treaty (1994), the Patent Cooperation Treaty (1970) and the Patent Law Treaty (2000).

Romania protects intellectual property rights, including trademarks, patents, copyright and designs, as well as geographical indications and appellations of origin for food products.

Trademarks and Geographical Indications: Romania disciplines jointly trademarks and geographical indications in Law 84/1998, detailing registration procedures and the exclusive rights of intellectual property right holders. Geographical indications are specifically addressed in chapter XIII of the Law 84/1998, namely in Articles 72-85.

Patents are protected by Law 64/1991, which clarifies registration procedures. The law was recently amended by Law 83/2014, laying down new rules on employee inventions.

Copyright: copyright and related rights are disciplined by Law 8/1996. The Romanian legislation recognizes the author of intellectual or artistic work moral and economic rights.

Industrial designs: the discipline of industrial designs is specified in Law 280/2007, which regulates registration procedures and legal protection.

Registration of intellectual property rights

The State Patent and Trademark Office (*Oficiul de Stat pentru Invenții și Marci* - OSIM) is in charge of the registration of trademarks, patents and industrial designs.

Copyright protection, as well as the collection of royalties accruing to authors, are ensured by the Romanian Copyright Office (*Oficiul Roman pentru Drepturile de Autor*). Exclusive rights on Geographical Indications and Appellations of Origin for food products are attributed by the Ministry of Agriculture and Rural Development (*Ministerul Agriculturii și Dezvoltării Rurale*), which publishes its data on a national register of geographical indications and appellations of origin.

Sanctions regime

Deliberate violations of intellectual property rights are criminally prosecuted by Romanian law, which also provides for civil remedies, such as compensation of damages to the right holder. The Court may also order interim injunctions pending the analysis on the merits of the case. Despite a comprehensive legal framework, the private sector voiced concerns on the absence of an administrative authority in charge of receiving complaints in cases of infringements of intellectual property rights. Worth noting is also the indictment of only a small part of the alleged offenses. In 2014, for example, only 60 out of 7,310 investigated cases were indicted.

Geographical Indication and Trademark Infringements

According to Article 90 Law 84/1998, violations of the exclusive rights of a trademark owner, including the use of a sign identical or similar to a registered trademark to designate products identical or similar for which the sign is registered are punishable by imprisonment from three months to three years and a fine from 50,000 to 150,000 lei (about 11,140 to 33,420 euro). The same penalty applies to the use of a geographical indication misleading the public as to the true origin of the product. Moreover, if the trademark is well-known in Romania, the reproduction and imitation of an identical or similar sign for different categories of products or services are also prohibited, in order to prevent third parties from exploiting the reputation of the notorious mark and causing prejudice to the legitimate trademark owner. The Court may order interim injunctions or evidence preserving measures, including the confiscation of the goods and of the equipment used to commit the crime.

Patent Infringements

According to Article 58 of Law 64/1991, false attributions of a patent are punishable by imprisonment from six months to two years or by fine from 5,000 to 10,000 lei (about 1,110 to 2,220 euro). Moreover, violations of the exclusive rights of the patent holder are sanctioned with imprisonment from six months to two years or a fine from 10,000 to 30,000 lei (about 2,220 to 6,680 euro). Upon conviction, the Court may order the forfeiture and destruction of infringing products and of the equipment used to commit the offense. Article 62 Patent Law further provides that illicit disclosure of information in patent applications, prior to their publication, carried out by staff of the State Patent and Trademark Office, or any other individual aware of it for professional reasons, is punishable by imprisonment from three months to two years.

Industrial Design Infringements

Article 50 of Law 129/1992 prohibits false attributions of an industrial design by third parties, which are sanctioned with imprisonment from six months to two years and a fine from 1,500 to 3,000 lei (about 330 to 660 euro). Article 52 of Law 129/1992 also forbids the reproduction,

placing on the market, sale, and storage for sale, import and export of products incorporating the registered design or industrial model, without the authorization of the legitimate right holder. Infringements are sanctioned with imprisonment from six months to five years.

Should the illicit exploitation of the industrial design cause damage to public health or safety, the prison term ranges from two to ten years.

Copyright Infringements

Copyright violations are covered by Article 139 paragraph 6 of Law 8/1996, which prohibits the unauthorized reproduction of protected works for distribution, irrespective of the illicit profits obtained, as well as the import, export and any introduction of the pirated goods on the domestic market. Infringements are punishable by imprisonment from two to five years.

Moreover, the offer, distribution, possession, storage and transportation of pirated goods, for the purpose of communication to the public, are sanctioned with imprisonment from one to five years.

If the above conducts are carried out with profit-making intent, the prison term ranges from three to twelve years, which also applies to the rental and the offer for rental of pirated goods. Article 139 paragraph 6 mandates a prison term from six months to three years for any form of advertisement of pirated products. If the convict has obtained a significant illicit profit, having regard to the large-scale production of infringing goods and to the corresponding value of the original products, the prison term ranges from five to fifteen years.

The moral right of authorship is protected by Article 141 of Law 8/1996, which punishes false attributions of a protected work and its distribution to the public by third parties, with imprisonment from three months to five years.

In the same perspective, Article 143 Law 8/1996 punishes by imprisonment from six months to three years the production, import, distribution, offer for sale or rental of equipment aimed at circumventing technological protection measures used by the copyright holder, along with the effective removal or neutralization thereof.

National Anti-Counterfeiting Authorities

The Customs Administration (*Directia generală a Vănilor*) within the National Tax Administration Agency (*Agentia Nationala de Administrare Fiscală* - ANAF) is in charge of the collection of excise duties and other taxes. Moreover, in accordance with Regulation (EU) No. 608/2013 on the protection of intellectual property rights by Customs authorities, it may seize goods suspected of violating intellectual property rights, acting either at the request of the right holder or *ex officio*. However, representatives of the private sector advocate more effective communications between the Customs Administration and intellectual property right holders on the destruction of counterfeit products.

Investigations on intellectual property rights infringements are assigned to the Economic Crime Investigation Service (*Serviciul de Investigare a Criminalității Economice*) of the National Police.

If organized criminal groups are involved in violations of intellectual property rights, Law 508/2004 entrusts investigations to the Directorate for Investigation on Organized Crime and Terrorism (*Direcția de Investigare a Infrafracțiunilor de Criminalitate Organizată și Terorism - DIICOT*), within the Office of the Public Prosecutor attached to the High Court of Cassation and Justice.

Food safety

Competent authorities

The National Phytosanitary Agency (*Autoritatea Națională Fitosanitară*) and the State Directorate of Inspection (*Direcția Monitorizare Inspecții, Verificare și Control*) within the Ministry of Agriculture and Rural Development (*Ministerul Agriculturii și Dezvoltării Rurale - MARD*) are primarily tasked with ensuring food safety. The National Phytosanitary Agency is the competent authority for the coordination of plant health controls and on inspection of pesticide residues on foods of plant origin.

The National Veterinary Health and Food Safety Authority (*Autoritatea Națională Sanitară Veterinară și pentru Siguranța Alimentelor - ANSVSA*), within the Ministry of Agriculture and Rural Development, performs safety controls on food products of animal origin and verifies compliance with health standards. A specific Directorate General for official controls deals instead with inspections of industrial and commercial premises of food business operators.

The National Authority for Consumer Protection (*Autoritatea Națională Pentru Protecția Consumatorilor*) is mandated to enforce compliance with labeling and advertising requirements for food products.

Repression of food fraud

Romania complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 853/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 853/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;

- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

Domestic law provides for two categories of food fraud, which are subjected, respectively to administrative or criminal penalties, based on the gravity of the offense. The combined provisions of Law 150/2004 on Food Safety and Government Resolution 984/2005 are aimed at protecting consumers and preventing fraudulent or deceptive practices, including the adulteration of food products. Article 14 of Law 150/2004 prohibits the placing on the market of food products which present a risk to human health.

Article 17 of Law 150/2004 on Food Safety establishes a system of anti-fraud official control for food business operators. Government Resolution 984/2005 provides for its implementation, by listing a series of food safety violations subjected to administrative sanctions, based on the circumstances of the case, the gravity of the conduct and previous offenses committed by the operator. Penalties include monetary fines, suspension of business license, seizure of adulterated foods or ingredients, followed by the destruction thereof if necessary according to the Court.

Pursuant to Article 19 of the Law on Food Safety, if a food business operator has reason to believe that a product he/she imported, manufactured or distributed does not meet safety requirements, or presents a risk to human health, he/she must immediately withdraw the product from the market and inform the competent public authorities. In case the product has already reached the public, operators must inform consumers of the reason for its withdrawal, and if necessary, recall from consumers the supplied items, when alternative measures would not ensure health protection. Moreover, business operators must provide information and cooperate with the competent authorities for the purposes of risk prevention.

Article 357 of the Criminal Code mandates a term of imprisonment from three months to three years against the manufacturing and offer to the public of adulterated food and beverage hazardous to health.

Article 358 of the Criminal Code prohibits instead the sale of foodstuffs and drinks adulterated or expired, which are hazardous to human health, imposing the penalty of imprisonment from six months to three years. The same sanction applies to the sale of meat from animals not subjected to veterinary inspection.

Actions and operations at national and international level

Romania has participated in international law enforcement operations against counterfeiting, in particular Operation Opson IV, coordinated by Interpol and Europol, which led to the seizure of more than 2,500 tons of counterfeit or altered foodstuffs and beverages (including mozzarella, strawberries, eggs, cooking oil and dried fruits, etc.) in 47 countries.

Moreover, on July 29th 2013 the Customs Administration in Constanta has inspected a container shipped from the United States to a Bucharest-based company, discovering 2,799 cans of energy drinks bearing counterfeit trademarks, including Monster, Coca Cola and Dr. Pepper; over 313 cosmetic products bearing imitations of OldSpice, Oral-B and Crest trademarks. The market value of original items is estimated at 66,000 euro.

Worth noting is also a major operation against counterfeit alcoholic beverages, conducted by the Romanian Customs Administration on June 20th, 2013 in Covasna (near Brasov), which led to the seizure of 23,468 liters of alcoholic beverages deprived of tax stamps. The entire shipment, worth about 704,040 lei (about 157,891 euro), was seized for evidentiary purposes and stored at the headquarters of the Customs authority of Covasna.

According to the Report on EU customs enforcement of intellectual property rights, published by the Directorate-General for Taxation and Customs Union - DG TAXUD, in 2014 the Romanian Customs Administration seized 3,076,236 counterfeit goods at national borders, with an 80% increase compared to 2013.

Databases and statistics on counterfeiting and food fraud

Romania participates in the databases of the EU for the fight against counterfeiting, the Enforcement Database (EDB) and the Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Romanian authorities provide information on seizures at the borders of articles suspected of infringing intellectual property rights.

With respect to food fraud, the country is a member of the EU Rapid Alert System for Food and Feed (RASFF). According to the RASFF 2015 Annual Report, the notifications submitted by the Romanian authorities have risen from 7 in 2007 to 23 in 2015.

SERBIA

Intellectual property rights

Serbia is not a member of the WTO. It has ratified numerous international conventions on the protection of intellectual property rights, including the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), the WIPO Copyright Treaty (1996), the Trademark Law Treaty (1994) and the Patent Law Treaty (2000).

Domestic law recognizes intellectual property rights, in particular trademarks, patents, copyrights, industrial designs, geographical indications and appellations of origin for food products.

Geographical indications are disciplined by the Law on Geographical Indications, published in the Official Gazette 18/2010, which details registration procedures.

Trademarks are protected by the Trademark Law, published in the Official Gazette No 104/2009. The Act contains registration procedures and ensures protection to well-known trademarks.

The regime of patents is provided by the Patent Law, published in the Official Gazette No 99/2011, which regulates registration procedures.

Copyright and related rights are regulated in the Law on Copyright, published in the Official Gazette No 99/2011. Serbian law recognizes the author of an intellectual work both economic and moral rights.

Industrial designs are disciplined by the Law on the Protection of Industrial Designs, published in the Official Gazette No 104/2009, specifying registration procedures and legal protection of registered designs.

Registration of intellectual property rights

The registration of trademarks, patents and industrial designs is entrusted to the Office of Intellectual Property (*Zavod za Intelektualnu Svojину*) of the Serbian Republic.

Copyright protection, as well as the collection of royalties accruing to the authors, are ensured by the Section for Copyright, Related Rights and International Cooperation (*Sektor za autorsko i srodna prava, međunarodnu saradnju*), within the Office of Intellectual Property (*Zavod za Intelektualnu Svojину*). The right to use geographical indications and appellations of origin for food products is attributed by the Office of Intellectual Property, following the favorable opinion of the Ministry of Agriculture.

Sanctions regime

Serbian law establishes both criminal and civil remedies against deliberate infringements of intellectual property rights, including compensation of damages. The Court may also order interim injunctions and evidence preserving measures pending the analysis on the merits of the case. Yet the private sector raises concerns on the general conversion of prison terms in monetary sanctions. As for civil remedies, the lack of objective criteria to quantify compensation for damages is reported to be a critical issue, along with the generally low amount of damages awarded. The enforcement of the right to compensation can finally be challenged by the insolvency of the convicted person.

Geographical Indication Infringements

The Serbian law prohibits the unauthorized use of geographical indications. According to Article 80 Law on Geographical Indications, infringements are punishable by a fine of 100,000 to 3,000,000 dinar (about 820 to 24,610 euro) when committed by legal persons. An additional sanction from 50,000 to 200,000 dinar (about 410 to 1,640 euro) is also inflicted to the legal representative of the responsible company.

If the violation is attributed to an entrepreneur, the monetary fine ranges from 60,000 to 500,000 dinar (about 490 to 4,100 euro). Should the infringement be attributed to a natural person the fine ranges from 10,000 to 50,000 dinar (about 80 to 410 euro).

Trademark Infringements

Article 84 of the Trademark Law specifies that trademark infringements, including the imitation of a protected sign, are liable to a fine from 100,000 to 3,000,000 dinar (about 820 to 24,610 euro), when committed by a legal person. An additional sanction from 50,000 to 200,000 dinar (about 410 to 1,640 euro) is also imposed on the legal representative of the responsible company. Moreover, the Trademark Law mandates the seizure of counterfeit products and machinery used to commit the offense, as well as the publication of the judgment. Pursuant to Article 85, infringements attributed to natural persons are subjected to a fine from 50,000 to 500,000 dinar (about 410 to 4,100 euro) when committed in the exercise of business activities, whereas the penalty ranges from 10,000 to 50,000 dinar (about 80 to 410 euro) when the offense is committed by a private individual.

Patent Infringements

Article 170 of the Patent Law clarifies that the unauthorized production, import, export, offer for sale, storage or use of patented products or processes for commercial purposes, are punishable by a fine from 100,000 to 2,000,000 dinar (about 820 to 16,400 euro), when

committed by legal persons. If the offense is attributed to an entrepreneur the fine ranges from 50,000 to 500,000 dinar (about 410 to 4,100 euro), whereas natural persons are subjected to a penalty from 50,000 to 150,000 dinar (about 4,100 to 12,300 euro). Finally, the law mandates the seizure and destruction of infringing products and of the equipment used to commit the crime, as well as the publication of the judgment.

Industrial Design Infringements

Article 63 of the Law on the Protection of Industrial Designs forbids the placing on the market, import, export and storage for sale of products incorporating a registered design or industrial model without the authorization of the legitimate right holder.

According to Article 75 Law on the Protection of Industrial Designs, offenses committed by legal persons are punishable by a fine from 100,000 to 3,000,000 dinar (about 820 to 24,610 euro), with an additional penalty from 50,000 to 200,000 dinar (about 410 to 1,640 euro) inflicted to the legal representative of the company. If the crime is committed by an entrepreneur the fine ranges from 50,000 to 500,000 dinar (about 410 to 4,100 euro); whereas individuals are subjected to a penalty from 10,000 to 50,000 dinar (about 82 to 410 euro), in compliance with Article 76 Law on the protection of Industrial designs. Moreover, the same article mandates the destruction of counterfeit products and of the equipment used to commit the offense.

Copyright Infringements

Article 215 of the Law on copyright specifies that the disclosure, recording, reproduction, communication to the public by any means, in whole or in part, of protected works, artistic performances, phonograms, videograms, or databases, as well as the placing on the market of illicit copies, are subjected to a fine from 100,000 to 3,000,000 dinar (about 820 to 24,610 euro), when carried out by legal persons. The same penalties apply to the production, import, offer for sale, hire, advertising and possession for commercial purposes of devices, products or computer programs primarily aimed at the circumvention of technological protection measures for copyright protection.

Pursuant to Article 215 paragraph 2, the legal representative of a company responsible for the above violations is punishable by a fine from 50,000 to 200,000 dinar (about 410 to 1,640 euro). Finally, the law provides for the seizure and destruction of pirated goods and the equipment used to commit the crime, as well as for publication of the judgment.

Infringements carried out by natural persons are sanctioned with a fine from 50,000 to 500,000 dinar (about 410 to 4,100 euro) if committed in the exercise of business activities, or with a penalty from 10,000 to 50,000 dinar (about 82 to 410 euro) in all other cases.

National Anti-Counterfeiting Authorities

The Customs Administration (*Uprava Carina*), within the Ministry of Finance (*Ministarstvo finansija*) may seize, examine and acquire samples of goods suspected of violating intellectual property rights. In case of violations in the import-export procedures, Customs officials may intervene either upon request of the right holder or *ex officio*. Yet intellectual property right holders are required to bear the costs related to the custody and destruction of counterfeit goods.

The Serbian Tax Administration (*Uprava Poreska*) within the Ministry of Finance (*Ministarstvo finansija*) enforces intellectual property rights on software and databases, in accordance with the Law on Special Powers for the Sake of Efficient Protection of intellectual property rights and through its Department for Control of the Legality of Software, set up in 2011.

The Market Inspectorate (*Tržišna inspekcija*) within the Ministry of Agriculture (*Ministarstvo Poljoprivrede*) is the agency responsible for the identification and seizure of counterfeit and pirated products on the national market. It carries out inspections both *ex officio* and upon request of intellectual property rights holders. A significant role in conducting investigation against counterfeiting is finally conferred to the Serbian Police (*Policija Srbije*).

Food safety

Competent authorities

The Ministry of Health (*Ministarstvo zdravlja Republike Srbije*) is responsible for safety controls on novel foods, infant formulas, dietary supplements, additives, flavorings and for the integrity of public water supply. It shares with the Ministry of Agriculture the task of drafting legal provisions related to food safety, which is modeled on Regulation (EC) No. 178/2002. The Ministry of Agriculture (*Ministarstvo poljoprivrede i zaštite životne sredine*) is responsible for food safety from primary production, to processing, transportation and import / export. To that end, the Ministry carries out veterinary, plant health and food safety inspections through four specific Directorates. The Ministry of Agriculture also issues import permits for foodstuffs of animal origin, veterinary drugs, seeds and pesticides.

Repression of food fraud

Serbian law provides for two categories of food fraud, which are disciplined by the Law on Food Safety and the Criminal Code, and subjected respectively to administrative or criminal penalties, based on the gravity of the offense.

Article 79 of the Food Safety Act lists a number of administrative offenses on the part of the food business operators, punishable by fines from 300,000 to 3,000,000 dinar (about 2,460 to 24,600 euro). Of great importance is the prohibition to engage in business activities in the

agro-food sector without prior registration in the national register, as well as the general obligation to ensure the integrity of food products on the Serbian market.

Illicit is also non-compliance with the duty to organize a traceability scheme for food products, as well as with hygiene requirements along the supply chain, based on the HACCP protocol. Prohibited conducts include breaches of quality requirements on food products and of measures adopted by public authorities following official controls.

A different set of fraud related to the agro-food sector is defined by Article 80 of the Law on Food Safety, which punishes with a fine from 150,000 to 1,000,000 dinar (about 1,230 to 8,200 euro) the placing on the market of foodstuffs bearing trademarks or labels not compliant with legal requirements, or the communication of false and misleading information for advertising and sale of food products. The same penalty applies to irregularities in the business correspondence, which prevent or hinder the identification of operators involved in the purchase or sale of food products, feed, livestock intended for human consumption and food contact materials.

As for crimes, Article 256 of the Criminal Code specifies that the manufacturing, sale and distribution of foodstuffs and beverages hazardous to health are punished with imprisonment up to three years. The same penalty applies to the distribution of food in breach of hygiene requirements or after the expiration date, while the goods in question are subjected to seizure. To further protect public health, Article 257 of the Criminal Code addresses shortcomings in the system of inspections for food safety, providing that failure to inspect livestock intended for human consumption and foodstuffs in general, which gives rise to a health risk, is punishable by imprisonment up to three years.

In broader terms, Article 258 of the Criminal Code specifies that the adulteration of food products and beverages through toxic substances is subjected to a prison term up to three years. According to Article 259, if the production and distribution of adulterated foodstuffs, as well as inefficiencies in the system of official controls and the sophistication of food products resulted in serious bodily harm, the prison term is increased up to eight years. If the death of a person ensues, the prison term ranges from two to twelve years.

Actions and operations at national and international level

Within the framework of national enforcement operations, on 9 January 2015, the Serbian Police has carried out one of the largest seizures ever conducted on a national scale against counterfeit cigarettes, with the arrest of 12 persons and the seizure of 1,338 tons of dried tobacco, held in a warehouse at Ljubovija. If sold on the national market, the illicit merchandise - with an estimated value of 2,900,000 US dollars - would have caused a 1,300,000 US dollars tax evasion.

On 18 April 2016, Customs officers at the Bulgarian border of Gradina have identified and seized a shipment of counterfeit clothing products, in particular 1,674 pairs of shoes bearing false Adidas, Umbro and Armani trademarks; 1,936 children garments bearing falsified Disney signs, as well as 376 counterfeit belts, illegally reproducing Hermes, Gucci and Diesel trademarks. Shipped from Turkey, the merchandise was in transit on Serbian territory and intended for Bosnian market.

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available. However, in 2013 a specific regulation on the creation and organization of the rapid alert system for food and feed was published on Official Gazette of the Republic of Serbia 62/13.

According to the RASFF 2015 Annual Report, products of Serbian origin were the subject of 44 notifications during the period 2013-2015.

SLOVENIA

Intellectual property rights

Slovenia is a member of the EU and of the WTO.

It has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the WIPO Copyright Treaty (1996), the Trademark Law Treaty (1994), the Patent Cooperation Treaty (1970) and the Patent Law Treaty (2000).

Domestic law protects intellectual property rights, including trademarks, patents, copyrights, industrial designs, geographical indications and appellations of origin for food products.

Geographical indications are disciplined in Articles 55-60 of the Industrial Property Act, which regulates the designation of industrial and commercial products, as well as in Articles 77-78 Agriculture Act, which refer instead to the designation of foodstuffs.

Trademarks are regulated by Chapter IV of the Industrial Property Act, in particular Articles 42-54, which define registration procedures and also provide protection to well-known marks

The protection of patents is provided by Articles 10-32 of the Industrial Property Act, which regulate registration procedures.

Copyright is disciplined by the Law on copyright and related rights, as amended on 15 December 2006. Slovenian legislation recognizes the author of intellectual works moral and economic rights.

Industrial designs: the discipline of industrial designs is limited to articles 33-41 of Chapter III Industrial Property Act, which detail registration procedures and legal protection.

Registration of intellectual property rights

The registration of exclusive rights on trademarks, patents, industrial designs is entrusted to the Slovenian Intellectual Property Office (*Urad Republike Slovenije za intelektualno lastnino* - UIL) within the Ministry of Economic Development, which is also in charge of copyright protection and of registering geographical indications.

Relevant data are published on a national register of geographical indications and appellations of origin, maintained by the Slovenian Intellectual Property Office.

Sanctions regime

Geographical Indication Infringements

According to Article 233 of the Slovenian Criminal Code, the unauthorized use of a registered geographical indication for commercial purposes is subject to a prison term up to three years.

Specific provisions concerning the unlawful use of geographical indications for agricultural products and foodstuffs are contained in the Agriculture Act. In particular, Article 176 of the Agriculture Act prohibits the designation of a product as a traditional specialty guaranteed if it is not manufactured from certain ingredients and through a traditional production method, or does not comply with further requirements laid down by EU regulations.

The same article forbids the use of geographical indications and appellations of origin for products which do not meet the conditions laid down Articles 77-78 Agriculture Act, which define the notion of geographical indication in Slovenian law, in accordance with relevant EU regulations. The illicit exploitation of geographical indications for food products is subjected to administrative fines from 1,000 to 5,000 euro.

Trademark Infringements

Pursuant to Article 233 of the Slovenian Criminal Code, the unauthorized use of a registered trademark is punishable with imprisonment up to three years. The same penalty applies to the adoption of particular components of a trademark, a logo or other signs belonging to third parties in the trade name.

Furthermore, Article 134 of the Industrial Property Act establishes that the use for commercial purposes of references to the name, emblem, flag or other official sign of the Republic of Slovenia by a legal person, without permission of the Slovenian government, is subject to a fine from 417 to 41,729 euro. An additional penalty from 42 to 2,086 euro is inflicted to the natural person responsible for the infringement.

Patent Infringements

Article 134 of the Industrial Property Act mandates a fine from 41 to 2086 euro against the supply of false information in the patent application, and forbids filing a patent application with the Intellectual Property Office on behalf of the inventor by persons which are not a Trademark and Patent Agent. According to Article 234 of the Slovenian Criminal Code, the unauthorized use of a patented product or process for commercial purposes is punishable by imprisonment up to three years.

Industrial Design Infringements

Article 239 of the Slovenian Criminal Code punishes the unauthorized use for commercial purposes of a registered design with imprisonment up to three years. The specific prohibited conducts are defined by Article 37 of the Industrial Property Code, which lists the exclusive rights of the right holder arising from the registration of the design.

Copyright Infringements

Article 184 of the Law on copyright and related rights establishes that the unauthorized reproduction, distribution, rental, public performance, presentation, transmission and re-transmission, transformation and adaptation of a protected work or a copy thereof are punishable by a fine of 1,670 euro. The same penalty applies to the illicit use of pirated software.

Pursuant to Article 184 of the Law on copyright, the same level of protection applies to phonograms or videograms, as well as to performing arts and to television broadcasting.

The same article punishes the circumvention of technological protection measures adopted by the copyright owner, as well as the production, import, distribution, sale, rental, advertising and possession for commercial purposes of devices, products or computer programs, along with the supply of services, aimed at circumventing technological protection measures. Finally, the law provides for the confiscation of the equipment used to commit the offense.

National Anti-Counterfeiting Authorities

The Slovenian Customs Administration (*Carina - Finančna uprava Republike Slovenije*), at the Ministry of Finance Service (*Ministrstvo za finance*), is in charge of the collection of Customs duties and other taxes. Moreover, in accordance with Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities, it can seize goods suspected of violating intellectual property rights, acting either at the request of the right holder or *ex officio*.

The Financial Crimes Section within the Directorate General of Police (*Sektor za Gospodarsko kriminaliteto*) is responsible for investigating and prosecuting crimes related to intellectual property.

Food safety

Competent authorities

The Ministry of Agriculture is tasked to ensure food safety through the Administration of the Republic of Slovenia for Food Safety, Veterinary Sector and Plant Protection (*Uprava RS za varno hrano, veterinarstvo in Varstvo rastlin - AFSVSPP*) and the Inspectorate of the Republic of Slovenia for Agriculture, Forestry, Hunting and Fishing (*Inspektorat RS za kmetijstvo, gozdarstvo, lovstvo in ribištvo*).

The first is responsible for the safety of food products and feed, and for the protection of animal and plant health. In particular, the AFSVSPP is in charge to develop policies and legislation in the field of food and feed safety, animal disease, use of veterinary medicinal products, contaminants, additives, food enzymes and flavorings, novel foods, genetically modified foods, general and nutritional labeling. The AFSVSPP also manages official controls.

The Inspectorate of the Republic of Slovenia for Agriculture, Forestry, Hunting and Fishing is in charge of identification of animals, the preservation of genetic resources in animal husbandry and the controls for the disposal of animal by-products.

The Ministry of Agriculture is the competent authority to examine applications for the registration of geographical indications for food products.

The Ministry of Health (*Ministrstvo za zdravje*) is responsible for the implementation of the food safety policy through the Health Inspectorate (*Zdravstveni Inspektorat*), and enforces official controls on food contact materials, food supplements and products intended for particular nutritional uses.

Repression of food fraud

Slovenia complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 853/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 853/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;
- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

The national legislation provides for two categories of food fraud, subjected to administrative or criminal penalties based on the gravity of the offense.

Administrative offenses are provided for in Section XVIII of the Agriculture Act, which in Article 176 mandates a fine from 1,000 to 5,000 euro for the placing on the market of food products in breach of legal requirements, or not compliant with labeling specifications. The same penalty applies to illicit references to organic farming production methods, on the part of operators not included in the specific national register of producers and processors of organic agricultural products.

Moreover, Article 177 of the Agriculture Act clarifies that the production and use of labels bearing false or misleading information, which are likely to confuse the consumer as to the characteristics of the foodstuff, are punishable by a fine ranging from 2,000 to 6,200 euro.

Finally, Article 177 paragraph 2 of the Agriculture Act punishes any obstruction to official controls for food safety, as well as non-compliance with administrative measures taken by public authorities following the inspection.

With regard to criminal offenses, Article 184 of the Slovenian Criminal Code prohibits the production, sale and supply of food products hazardous to human health with imprisonment up to three years. If the act results in serious bodily harm to one or more persons, the prison term may be increased up to eight years. In case the death of one or more persons ensues, a twelve years prison term may be inflicted. The Court may also order the seizure of adulterated food products.

Specific emphasis is placed on official inspections for meat products, as Article 185 of the Criminal Code punishes with imprisonment up to one year irregularities in the performance of inspections on livestock intended for human consumption, on the part of a veterinary or public official.

Finally, Article 337 of the Criminal Code states that the adulteration of food products with any substance likely to cause a risk to human health is punishable by imprisonment up to three years. If the act results in serious bodily injury to one or more persons, the prison term may be increased up to five years. If the death of one or more persons ensues, a twelve years prison term may be inflicted.

Actions and operations at national and international level

According to the Report on EU customs enforcement of intellectual property rights, published by the Directorate-General for Taxation and Customs Union - DG TAXUD, in 2014 the Slovenian Customs Administration seized 505,975 fake goods at national borders, an increase of 155% compared to 2013.

The Slovenian Customs Administration's 2014 Annual report explains that the majority of counterfeit products enter the national territory by sea, via container ships, especially in Koper, and by mail at the post office in Ljubljana. While the merchandise in transit at Koper are often intended for other EU countries, as well as for Montenegro, Serbia and Macedonia; the articles seized at the post office in Ljubljana are purchased online and intended for the domestic market.

For instance, in March 2013, customs officers have carried out the seizure of 24 tons of counterfeit herbicide at the port of Koper, bearing counterfeit Syngenta brand, shipped from China and intended for the Slovak market.

Databases and statistics on counterfeiting and food fraud

Slovenia participates in the databases of the European Union for the fight against counterfeiting, the Enforcement Database (EDB) and Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Slovenian authorities provide information on seizures at the borders of articles suspected of infringing intellectual property rights.

As for food fraud, the country is a member of the EU Rapid Alert System for Food and Feed (RASFF). According to the RASFF 2015 Annual Report, the number of notifications provided by the Slovenian authorities decreased from 47 in 2007 to 39 in 2015.

SPAIN

Intellectual property rights

Spain is a member of the EU and is part of the WTO.

It has ratified several international conventions on the protection of intellectual property rights, including the TRIPS Agreement, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958), the WIPO Copyright Treaty (1996), the Trademark Law Treaty (1994), the Patent Cooperation Treaty (1970) and the Patent Law Treaty (2000).

The State recognizes protection to intellectual property rights, in particular trademarks, patents, copyrights, industrial designs and geographical indications and designations of origin for food products.

Spain ensures protection to geographical indications in Law 6/2015, which regulates registration procedures.

The exclusive rights of trademark owners are protected by Law 17/2001, which details registration procedures and protects well-known trademarks.

Patents are disciplined in Law 24/2015, which regulates registration procedures.

Copyright and related rights are regulated in Legislative Decree 1/1996, which recognizes the author of intellectual works moral and economic rights.

The discipline of industrial designs is contained in Law 20/2003, which regulates the registration and legal protection.

Registration of intellectual property rights

The registration of trademarks, patents, industrial designs is entrusted to the Spanish Patent and Trademark Office (*Oficina Española de Patentes y Marcas*).

Copyright protection and the collection of royalties accruing to the authors are ensured by the Deputy Directorate General of Intellectual Property (*Subdirección General de Propiedad Intelectual*), within the Ministry of Education. The right to the use of geographical indications and designations of origin for food products is awarded by the General Directorate of Food Industry (*Dirección General de la Industria Alimentaria*), within the Ministry of Agriculture.

Relevant data are published on a national register of geographical indications and appellations of origin maintained by the Ministry of Agriculture.

Sanctions regime

With respect to intellectual property infringements, worth noting is that Article 50 of the Spanish Criminal Code provides for financial penalties from 2 to 400 euro for natural persons, and from 30 to 5,000 euro for legal persons, based on the economic conditions of the convicted person. The fine must be paid daily, for a period of between 10 days and two years.

Apart from the limited deterrence of monetary fines, right holders have raised concerns on the adequacy of compensations awarded in civil trials, relative to the prejudice caused by counterfeiting, as well as on the slowness of proceedings. Further difficulties may arise in the enforcement of the verdict due to the bankruptcy of the convicted party.

Geographical Indication Infringements

The national legislation provides for two categories of violations of geographical indications, which are subjected respectively to administrative or criminal penalties, based on the gravity of the offense. Administrative offenses are further specified in Articles 30-32 of Law 6/2015 as minor, serious or very serious, and respectively subjected to sanctions up to 2,000, 30,000 and 300,000 euro.

According to Article 275 of the Criminal Code, the intentional and unauthorized use of protected geographical indications or appellations of origin for commercial purposes is subjected to the penalty of imprisonment from six months to two years, as well as to a monetary fine to be paid from 12 to 24 months. The sanctions imposed are as severe as penalties provided for violations of other intellectual property rights.

Trademark Infringements

According to Article 274 of the Criminal Code, the unauthorized reproduction, imitation, modification and any usurpation of a trademark with an identical or similar sign, to designate identical or similar categories of goods or services, are punishable by imprisonment from one to four years and a fine from 12 to 24 months. The same penalties apply to the import and offer for sale of counterfeit goods and services.

Patent Infringements

Article 273 of the Criminal Code prohibits the production, import, use and offer for sale of patented products or of products obtained directly from a patented process, without the consent of the patent holder, establishing the penalty of imprisonment from six months to two years, and a fine to be paid from 12 to 24 months. The same penalties apply to the violations of the topographies of semiconductor products.

Industrial Design Infringements

Pursuant to Article 273 paragraph 3 of the Criminal Code, infringements of the exclusive rights to the use of an industrial design, through reproduction, import, use, storage for sale and placing on the market products incorporating the protected design, are sanctioned with imprisonment from six months to two years and a fine from 12 to 24 months.

Copyright Infringements

Article 270 of the Criminal Code prohibits the unauthorized reproduction, plagiarism, distribution and communication to the public, in whole or in part, the transformation, fixation on any medium, or transmission by any means, of a literary, artistic or scientific work for profit-making purposes, which are sanctioned with a prison term from six months to four years and a fine from 12 to 24 months.

The same penalties apply to the unauthorized export, storage and import of copies of a protected work.

Organic Law 1/2015, amending Article 270 of the Criminal Code, has adopted a broader definition of copyright infringement, including any unauthorized exploitation of a protected work, even different from the reproduction, plagiarism, distribution and communication to the public.

In addition, Organic Law 1/2015 mandates a prison term from one to four years for websites administrators, who in order to obtain a direct or indirect economic advantage, actively promote the collection and access to protected works, by offering links to the above works, without the authorization of copyright holders.

According to Articles 152 and 154 of the Organic Law 1/2015, violations of copyright law are punishable by imprisonment from two to six years if the infringer has obtained a significant illicit profit, if two or more persons are involved in committing the crime, or if minors are involved in illicit activities. The same penalties are applicable when the offense is of particular gravity, in light of the market value of infringing goods, the quantity of copies illegally reproduced, distributed or communicated to the public, and the prejudice caused.

In the same perspective, Article 181 of the Criminal Code prohibits the manufacture, import, circulation and possession of any device aimed at circumventing technological protection measures used by the copyright holder for the protection of software or any other work.

National Anti-Counterfeiting Authorities

As required by Regulation (EU) No. 608/2013 on the protection of intellectual property rights by customs authorities, the Customs Administration (*Departamento de Aduanas y Impuestos Especiales*), may seize goods suspected of violating intellectual property rights, acting either at the request of the right holder or *ex officio*.

Royal Decree 54/2014 has established the Intersectoral Commission for action against intellectual property rights infringements (*Comisión intersectorial para actuar contra las actividades vulneradoras de los derechos de propiedad industrial*), chaired by the Minister of Industry, Energy and Tourism. The Commission acts as coordination body between public and private stakeholders involved in the fight against counterfeiting, through the elaboration of proposals on initiatives and legislative reforms for the effective protection of industrial property rights, social awareness campaigns and communication with States and international organizations active in the fight against counterfeiting.

Within the Ministry of the Interior, the Unit against intellectual and industrial property infringements of the National Police (*Sección de delitos contra la propiedad Intelectual y Industrial - Policía Nacional*) is mandated to investigate intellectual property right violations.

Food safety

Competent authorities

The Ministry of Agricultural, Food and Environmental Policies (*Ministerio de Agricultura, Alimentación y Medio Ambiente - MAGRAMA*) and the Ministry of Health, Social Services and Equality (*Ministerio de Sanidad, Servicios Sociales e Igualdad - MSSSI*) are the competent authorities for the coordination and enforcement of official controls on food safety.

While the MAGRAMA is responsible for animal health, feed sector, the primary production of food of animal origin, plant health and food quality, the MSSSI oversees all subsequent stages of food production and, through the Spanish Agency for Consumer Protection, Food Safety and Nutrition (*Agencia Española de Consumo, Seguridad Alimentaria y Nutrición - AECOSAN*), ensures food safety. It also serves as a scientific advisor for public authorities and the agro-food industry.

Finally, the Environmental Protection Service (*Servicio de Protección de la Naturaleza - SEPRONA*) of the Civil Guard regulates the trade, labeling and the use of pesticides, as well as the sale of veterinary drugs.

Repression of food fraud

Spain complies with Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, and with EU food safety provisions, including:

- Regulation (EC) No. 853/2004 on the hygiene of foodstuffs;
- Regulation (EC) No. 853/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EU) No. 1169/2011 on the provision of food information to consumers;

- Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food;
- EU package on food improvement agents, including Regulations (EC) No. 1331/2008, 1332/2008, 1333/2008 and 1334/2008;
- Regulation (EC) No. 1107/2009 of pesticides and contaminants, and Regulation (EC) No. 396/2005 on maximum residue levels of pesticides;
- Regulation (EC) No. 1829/2003 on genetically modified food and feed.

The national legislation provides for two categories of food fraud, which are punishable respectively by administrative or criminal penalties based on the gravity of the offense. Article 50 of Food Safety and Nutrition Law lists a series of conducts subjected to administrative sanctions. The first category includes non-compliance with legal requirements on book-keeping, industrial premises and products for food business operators. Illicit is also the placing on the market of food products whose labeling does not meet legal requirements or contains false information. Failure to cooperate with enforcement authorities, as well as non-compliance on the part of economic operators with obligations relating to hygiene in the course of business activities amount to food safety infringements. Likewise, Article 50 of the Food Safety and Nutrition Law prohibits the use of adulterate raw materials and ingredients in the food industry, as well as the import and export of foodstuffs or feed whose trade is prohibited or limited for safety reasons.

Article 50 paragraph 2 of the Food Safety and Nutrition Law, defines as violations of nutrition standards the production, distribution, supply or sale of products presented to mislead consumers about relevant health information or nutritional values, along with violations of advertising requirements.

Article 51 ranks administrative wrongdoings as minor, serious and very serious, based on health risk criteria, the market share of the offender, the amount of unduly acquired profit, the direct intent to commit the violation, the gravity of the offense and possible recidivism.

According to Article 52, fines for minor violations may reach 5,000 euro; the maximum amount of fines for serious infringements is 20,000 euro, whereas for very serious infringements it can reach 600,000 euro. In case of very serious infringements, public authorities may order the closure of industrial or commercial facilities up to five years.

Pursuant to Article 363 of the Criminal Code, the sale, production and transformation of foodstuffs and beverages in breach of legal requirements related to the composition or nutritional values and hazardous to health are sanctioned with imprisonment from one to four years, as well as with a fine to be paid from six to twelve months and the revocation of the business license from three to six years.

The same punishment applies to the adulteration of foodstuffs and beverages for human consumption through additives or other substances likely to cause damage to health, as well as violations of the requirements for the feeding and treatment of livestock intended for human consumption, as provided for in Articles 364-365 of the Criminal Code.

Actions and operations at national and international level

Spain has participated in international operations against counterfeiting, in particular Operation Opson, conducted jointly by Interpol and Europol, involving more than 2,400 inspections at national level. Controls led to the identification of a company selling coffee labeled as 100% Arabica, which was actually a mix of different types of low quality coffee. Three executives responsible were arrested after a joint investigation by the Civil Guard, the Ministry of Agriculture laboratories (MAGRAMA) and the National Agency for Consumer Protection, Food Safety and Nutrition (AECOSAN).

During July and August 2015 Spain also took part in a joint operation with the French Customs Administration, coordinated by the Anti-Fraud Office (OLAF), which resulted in a first stage in the seizure of four containers at the port of Le Havre, loaded with 21 tons of counterfeit spare parts for motor vehicles, shipped from China and intended for the Spanish market.

The coordination of OLAF has allowed Spanish authorities to identify at the headquarters of the recipient company and confiscate more than three tons of counterfeit spare parts, which could endanger consumer safety if installed on motor vehicles.

According to the Report on EU Customs enforcement of intellectual property rights, published by the Directorate-General for Taxation and Customs Union - DG TAXUD, in 2014 the Spanish Customs Administration seized 1,619,264 counterfeit goods at national borders, marking a decrease of 54% compared to 2013.

Databases and statistics on counterfeiting and food fraud

Spain participates in the databases of the European Union for the fight against counterfeiting, the Enforcement Database (EDB) and Anti-Counterfeiting Intelligence Support Tool (ACIST). In particular, the Spanish authorities provide information on seizures, both at the border and in the internal market, of articles suspected of infringing intellectual property rights.

As for food fraud, the country is a member of the EU Rapid Alert System for Food and Feed (RASFF). According to the RASFF 2015 Annual Report, the notifications submitted by the Spanish authorities have increased from 169 in 2007 to 174 in 2015.

TUNISIA

Intellectual property rights

Tunisia is a member of the WTO and has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement (1994), the Lisbon Agreement for the Protection of Appellations of Origin and their international registration (1958) and the Patent Cooperation Treaty (1970). Tunisia recognizes protection to intellectual property rights, in particular trademarks, patents, copyrights, industrial designs, geographical indications and appellations of origin for food products.

Geographical indications are disciplined by Law 57/1999, detailing registration procedures.

The exclusive rights of the trademark owners are protected by Law 36/2001, which specifies registration procedures and recognizes well-known trademarks. Patents are disciplined in Law 84/2000, which regulates registration procedures. The discipline of copyright and related rights is contained in Law 36/1994, which awards both moral and economic rights to the author of an intellectual work. Industrial designs are disciplined in Law 21/2001, which regulates the registration and the extent of the protection.

Registration of intellectual property rights

The registration of trademarks, patents and industrial designs is assigned to the National Institute of Standardization and Industrial Property (*Institut National de la Normalisation et de la Propriété Industrielle* - INNORPI) within the Ministry of Industry.

Copyright protection, as well as the collection of royalties accruing to authors, are managed by the Tunisian Body of Copyright and Related Rights (*Organisme Tunisien des Droits d'Auteur et des Droits voisins* - OTDAV). The right to use geographical indications for food products is awarded following the approval of the Advisory Technical Committee for Appellations of Origin and Geographical Indications (*Commission Technique Consultative des Appellations d'Origine Contrôlée et des Indications de Provenance*) within the Ministry of Agriculture.

Sanctions regime

Geographical Indication Infringements

Article 34 of Law 57/1999 punishes with a fine from 1,000 to 20,000 dinar (about 430 to 8,630 euro) the use of a geographical indication to designate for commercial purposes products not originating from a specific registered area. The same sanctions apply to imitations and misleading references to geographical indications to indicate products not originating from a

specific registered geographic area on containers, packaging, advertising material and commercial correspondence; as well as the use of any sign that might mislead consumers as to the geographical origin of the product.

Trademark Infringements

Article 23 of Law 36/2001 prohibits the imitation and use of signs identical or similar to a registered trademark to designate identical or similar categories of products. Should the trademark be well-known in Tunisia, Article 24 of Law 36/2001 also prohibits the reproduction and use of identical or similar signs to designate different categories of merchandise.

Article 51 of Law 36/2001 specifies that the unauthorized reproduction, forgery, use, removal and alteration of a trademark, are sanctioned with a fine from 5,000 to 50,000 dinar (about 2,150 to 21,570 euro). The same penalty applies to the supply, export, storage and sale of goods or services under a counterfeit trademark. In case of recidivism, the fine is doubled and a prison sentence of one to six months may be inflicted.

Patent Infringements

Article 82 of Law 84/2000 provides that the production, sale, import, advertisement, storage for sale of a patented product, as well as the use of a patented process without authorization of the right holder, are punishable by a fine of 5,000 to 50,000 dinar (about 2,150 to 21,570 euro). In case of recidivism, the fine is doubled and the prison term ranges from one to six months. Moreover, pursuant to Article 90 of Law 84/2000, false attributions of inventorship are sanctioned with a fine from 1,000 to 5,000 dinar (about 430 to 2,150 euro), which may be doubled in case of repeated offenses.

Industrial Design Infringements

Article 24 of Law 21/2001 prohibits the unauthorized use and commercial exploitation of a registered industrial design, with particular reference to the production, sale and import of products incorporating a protected design. Violations are punishable by a fine from 5,000 to 50,000 dinar (about 2,150 to 21,570 euro). In case the registration did not occur or has expired, Article 24 also punishes false references to the registration of industrial designs in the commercial correspondence and in advertising, with a fine from 1,000 to 5,000 dinar (about 430 to 2,150 euro). In the event of recidivism the fine is doubled and the prison term ranges from one to six months.

Copyright Infringements

Article 52 of Law 33/2009, amending and supplementing Law 36/1994, provides that any exploitation of a protected work, carried out without a legally obtained license, is subjected to

a fine of 50,000 dinar (about 21,570 euro). In case of recidivism, the fine is doubled and the prison term ranges from one month to one year. Article 53 of Law 36/1994 establishes the criminal liability of the owner of industrial or commercial premises used to commit copyright infringements, through the unauthorized communication to the public of protected works, or the sale or rental of infringing copies, provided that the owner of the premises was aware of the commission of the crime.

National Anti-Counterfeiting Authorities

The Tunisian Customs Administration (*Direction Générale des Douanes*), within the Ministry of Finance (*Ministère des Finances*), may seize, examine and acquire samples of goods suspected of violating intellectual property rights. In the event of irregularities in import or export procedures, customs officers may intervene, either at the request of rights holders or *ex officio*. The authority to investigate intellectual property infringements is entrusted to the National Guard (*Garde Nationale*), within the Ministry of Interior, and by inspectors of the Ministry of Culture for cases of copyright piracy.

Food safety

Competent authorities

The National Agency of Health and Environmental Control of Products (*Agence Nationale de Contrôle Sanitaire des Produits et Environnemental* - ANCSEP) is tasked with safety controls on categories of products which are likely to affect human health and the environment. The Agency ensures coordination of food safety inspections at national level, respectively carried out by the Veterinary Service within the Ministry of Agriculture, by the Metrology Service within the Ministry of Commerce, and by inspectors of the Ministry of Health.

Repression of food fraud

The repression of food fraud in Tunisia is ensured by the combined provisions of Law 86/1994 on the supply chain of agricultural and fishery products, and Chapter II of the Law 17/1992 on consumer protection, which punishes commercial fraud, also related to the agro-food sector.

Article 32 of Law 17/1992 establishes that the placing on the market of products, including foodstuffs, in breach of legal and regulatory requirements, which may cause prejudice to public health, is punishable with imprisonment from 16 days to three months and a fine of from 500 to 20,000 dinar (about 210 to 8,630 euro). Moreover, Article 33 specifies that the intentional production, offer for sale, sale and distribution of consumer goods, including food products, which are toxic, falsified, altered or corrupted, is prosecuted with imprisonment from 16 days to three months and a fine from 500 to 20,000 dinar (about 210 to 8,630 euro).

According to Article 34 of Law 17/1992, if the violations of articles 32-33 cause serious bodily harm, the related penalties may be increased up to the double.

With respect to advertising, Article 35 of Law 17/1992 makes reference to Article 13, which prohibits the supply of false information, likely to mislead the public on the nature, composition, substantial qualities, origin, method and date of production, price, terms of sale and use of the product; as well as on the identity, quality and characteristics of the seller. With further reference to Article 16 of Law 17/1992, Article 35 also establishes that economic operators must inform consumers about the characteristics, composition, intended use, potential risks, and expiry date of the product. Non-compliance is liable to a fine of 1,000 to 20,000 dinar (about 430 to 8,630 euro).

Furthermore, Article 37 forbids obstructions to official controls against commercial fraud, carried out by Police officers and inspectors from the Ministries of Health and Agriculture.

The national legal framework to combat food fraud is completed by Chapter VII of Law 86/1994 on the supply chain of agricultural and fishery products. Article 30 provides that violations of hygiene and quality requirements related to the distribution of agricultural and fishery products, as defined by Articles 21-24, are punishable by a fine from 100 to 500 dinar (about 40 to 210 euro), which can be doubled in case of repeated offenses.

Actions and operations at national and international level

In April 2013, the Tunisian Customs Administration has carried out two operations against food fraud. In particular, customs officers at Ben Guardane prevented the illegal export to Algeria of 200,000 eggs loaded onto three trucks. Moreover, the Customs at Medenine have seized 4 tons of dates bearing false indications of geographical origin. In the same city, a third operation was carried out in March 2013, with the seizure of 5,550 liters of not edible and expired olive oil, originating in Spain and intended for the Tunisian market.

On May 19th 2015, the Tunisian Customs Administration conducted two significant anti-counterfeiting operations, respectively in the regions of El Omrane and Gabès. The first resulted in the discovery of counterfeit cosmetics, illegally stored in a private house. A total of 63,000 items, including deodorants, cosmetics and perfumes were seized as a result of the intervention. In a second operation, carried out the same day, Customs officers confiscated at Gabès 7000 packs of cigarettes and 430 cartons of typical Moroccan Maassel tobacco.

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available.

TURKEY

Intellectual property rights

Turkey is a member of the WTO and has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement (1994), the WIPO Copyright Treaty (1996), the Trademark Law Treaty (1994), the Patent Cooperation Treaty (2000) and the Hague Agreement Concerning the International Registration of Industrial Designs (1960).

Turkey recognizes protection to intellectual property rights, in particular trademarks, patents, copyrights, industrial designs, as well as geographical indications and appellations of origin for food products.

Geographical indications are disciplined in Decree-Law 555/1995, which regulates registration procedures.

Trademarks are protected in Decree-Law 556/1995, which contains registration procedures and recognizes well-known trademarks.

Patents are regulated by Decree-Law 551/1995, detailing registration procedures.

Copyright and related rights are regulated in Law 5846/195 on Intellectual and Artistic Works, most recently amended by Law 5728/2008. Turkish legislation recognizes the author of an intellectual work both moral and economic rights.

Industrial designs are disciplined in Decree-Law 554/1995, specifying registration procedures and the extent of legal protection.

Registration of intellectual property rights

The registration of geographical indications, trademarks, patents, designs and models is entrusted to the Turkish Patent Institute (*Türk Patent Enstitüsü*), within the Ministry of Customs and Trade (*Gümrük ve Ticaret Bakanlığı*).

The Directorate General of Copyright (*Telif Hakları Genel Müdürlüğü*) within the Ministry of Culture and Tourism (*Kültür ve Turizm Bakanlığı*) is in charge of the protection of copyright and related rights.

Sanctions regime

At the outset, it is worth noting that Article 52 paragraph 2 of the Turkish Criminal Code establishes monetary fines from 20 to 100 lira (about 6 to 30 euro), based on the economic

condition of the convicted person. The amount must be paid daily, for the period specified in the verdict.

Deliberate intellectual property infringements are criminally prosecuted in Turkish law, which also provides for civil remedies, such compensation of damages to the right holder. The Court may also issue interim injunctions and evidence preserving measures pending an analysis on the merits of the case.

Yet representatives of the private sector advocate the introduction of an administrative authority in charge of receiving complaints and investigate violations of intellectual property rights, as well as *ex officio* prosecution of alleged infringements by the police, rather than only upon complaint.

As for judicial protection, the EU 2015 Report on Turkey points out that the judiciary tends to resort to consultants, whose evaluation lays the ground for the subsequent verdict. The professionalism and impartiality of these experts could be strengthened, especially in the area of patents, for example by imposing minimum requirements in terms of qualifications and professional liability. In fact, due to flaws in the technical advisory system, only in a few cases can the right holder obtain an adequate exam of the case.

Finally, the quantification of damages awarded in civil trials is generally not proportionate to illicit profit acquired by the offender.

Geographical Indication Infringements

Violations of geographical indications are criminally prosecuted by Article 24a of the Decree-Law 555/1995 and are punishable by imprisonment from two to three years, and by a monetary penalty. The imposed penalties have thus the same deterrence as those applied to infringements of industrial property rights.

Trademark Infringements

Trademark infringements are qualified as counterfeiting by Article 9 of Decree-Law 556/1995, which prohibits the use and reproduction of any sign identical or similar to a registered trademark to designate goods identical or similar to the product categories for which the sign is registered. Should a trademark be well-known in Turkey, the Law prohibits the use and reproduction of any identical or similar sign to designate even different categories of products, insofar as the sign would take advantage of the reputation associated with the trademark and cause prejudice to the interests of the legitimate owner. Pursuant to Article 61a of Decree-Law 556/1995, trademark infringements are subjected to a prison term from one to three years and a fine to be paid up to 20,000 days. The Court may also order the closure of industrial or commercial premises used to commit the crime.

Patent Infringements

According to Article 73 of Decree-Law 551/1995, the patent holder has the exclusive right to produce and exploit the invention on the national territory. The unauthorized production, sale, use and import of patented products, as well as the use of a patented process, are prohibited. In compliance with Article 73/A letter (b) of Decree-Law 551/1995, false attribution of inventorship, or the removal of symbols affixed to a product to indicate patent protection, are punishable by imprisonment from one to two years and a monetary fine to be determined by the Court. Moreover, misrepresentations of a product as subject to patent protection are subjected to imprisonment from two to three years and a monetary fine to be determined by the Court. Finally, pursuant to Article 73/A letter (c), the unauthorized exploitation of a patented product or process by third parties is sanctioned with imprisonment from two to four years, a monetary fine to be determined by the Court along with the closure of industrial or commercial premises used to commit the crime.

Industrial Design Infringements

Article 48a of Decree-Law 554/1995 prohibits false attributions of the entitlement to intellectual property rights on industrial designs, as well as the illicit removal of signs or references affixed on products to indicate the registration of the design. Infringements are punishable by imprisonment from one to two years and a monetary fine to be determined by the Court.

Moreover, the same article prohibits carrying out acts which are reserved to the legitimate right holder of the registered design without his/her authorisation. Prohibited are also illicit references in commercial correspondence and in advertisement aimed at presenting the industrial design or model incorporated into a product as registered. Such conduct is subject to imprisonment from two to three years and a monetary fine to be determined by the Court.

In accordance with Article 48 of Decree-Law 554/1995, the unauthorized production, placing on the market, offer for sale, use, import and storage for sale of products incorporating a design identical or similar to a registered design are punishable by imprisonment from two to four years and a monetary fine to be determined by the Court. Equally prosecuted are the mere participation and assistance in illicit conducts, as well as the refusal to justify the availability of infringing goods. Finally, Article 48 punishes infringements of the contractual terms laid down in the license agreement by the licensee of a registered industrial design.

Copyright Infringements

Pursuant to Article 71 of Law 5846/1951, the unauthorized use of intellectual works protected by copyright is punishable by imprisonment from one to five years or a monetary fine to be determined by the Court, based on the circumstances of the case. False claims of authorship of

a work are subjected to imprisonment from six months to two years, or up to five years if the violation is followed by the dissemination or publication of the work, and a monetary fine to be determined by the Court.

According to Article 72 of Law 5846/1951, the intentional circumvention of technological protection measures for copyright protection is subjected to imprisonment from six months to two years and a monetary fine to be determined by the Court.

National Anti-Counterfeiting Authorities

The Turkish Customs Administration (*Gümrükler Genel Müdürlüğü*), within the Ministry of Trade and Customs (*Gumruk ve Ticaret Bakanlığı*) may seize, examine and acquire samples of goods suspected of violating intellectual property rights. In case of irregularities with import-export procedures, Customs officers may intervene both upon request of right holders and *ex officio*. However, representatives of the private sector point out the limited effectiveness of cooperation among intellectual property rights holders and the Customs authorities, which even if alerted on the threat associated with a specific shipment, cannot guarantee timely inspection due to financial and human resources constraints.

The Turkish National Police (*Türk Polis*), within the Ministry of Interior (*İçişleri Bakanlığı*), is tasked with conducting investigations and inspections in cases of intellectual property infringements, acting both *ex officio* or upon request of the right holder. To that end, a specific Police division has been established in 2003, in order to strengthen cooperation with relevant public authorities and to assess the economic impact of counterfeiting at national level.

Food safety

Competent authorities

The Ministry of Agriculture (*Ve Gıda Tarım Hayvancılık Bakanlığı*), through the Directorate General for Foodstuffs and Inspections (*Gıda ve Kontrol Genel Müdürlüğü*), is in charge of official controls on foodstuffs and feed, veterinary and phyto-sanitary products in Turkey. The Directorate General also acts as the contact point for international organizations, including the Codex Alimentarius Commission, the European Food Safety Authority (EFSA), the World Trade Organization (WTO) and the World Organization for Animal Health (OIE).

Repression of food fraud

Turkish law provides for two categories of food fraud, respectively subjected to administrative or criminal penalties based on the gravity of the offense.

The former are provided in the eighth section of the Law 5996/2010, which lists violations on the provisions on pesticides and food safety. For instance, special emphasis is placed on Articles 40-41 of Law 5996/2010.

In particular, Article 40 of Law 5996/2010 provides, in general terms, that food business operators are obliged to withdraw from the market, at their own expenses, foodstuffs unfit for human consumption.

If food business operators know or have reason to believe that foodstuffs they imported, manufactured or distributed pose risks to public health, non-compliance with the duty to recall products is punishable by a fine of 5,000 lira (about 1,500 euro).

Failure to ensure the traceability of food products, feed, and any substance to be incorporated in foodstuffs is sanctioned with a fine of 2,000 lira (about 602 euro), according to Article 40 letter (i). Article 30 of Law 5996/2010 clarifies that the Ministry of Agriculture issues licenses for food business operators. Engagement in economic activities of production, storage and distribution of foodstuffs without the administrative authorization amounts to an offense punishable by a fine up to 10,000 lira (about 3,010 euro).

Should official controls at industrial or commercial premises reveal the presence of adulterated or counterfeit food intended for sale, the responsible business operator is subjected to an administrative fine of 1,000 lira (about 3,010 euro) and the seizure of the infringing goods. In case the identified violations are likely to endanger human or animal health, the Ministry may suspend business operations until the adoption of the measures deemed necessary to ensure food safety, while an administrative fine up to 5,000 lira (about 1,500 euro) is applicable.

With reference to food-related crimes, Article 185 of the Turkish Criminal Code punishes with imprisonment from two to fifteen years the adulteration of foodstuffs or beverages through harmful substances.

Finally, pursuant to Article 186 of the Criminal Code, the sale, supply and possession of adulterated foodstuffs or beverages, which could pose a risk to human health, is subjected to imprisonment from one to five years.

Actions and operations at national and international level

Turkey has participated in international law enforcement operations against counterfeiting and food fraud, in particular Operation Opson, jointly coordinated by Interpol and Europol, which allowed the Turkish authorities to seize 145,855 counterfeit labels and packaging, 822 kg of freeze-dried soup, along with 14 tons of adulterated spices.

Domestically, of great importance is an operation conducted by the Customs Authority on April 24th, 2015, at the Bulgarian border of Hamzabeyli. The X-ray scan on a car in transit revealed the presence of 88 bottles of counterfeit alcoholic beverages and 199 contraband mobile

phones, concealed in the dashboard and in the fuel tank. The goods were confiscated and an investigation started by the Public Prosecutor of Edirne.

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available.

UAE - UNITED ARAB EMIRATES

Intellectual property rights

The United Arab Emirates (UAE) is a member of the WTO and has ratified numerous international conventions on the protection of intellectual property rights, including the TRIPS Agreement (1994), the WIPO Copyright Treaty (1996) and the Patent Cooperation Treaty (1970). The State recognizes protection to intellectual property rights, in particular trademarks, patents, copyrights and industrial designs. While a specific law is still lacking, geographical indications are currently disciplined by the Federal Law on trademarks 37/1992, which prohibits the registration of geographical names as a component of trademarks to designate products not originating from the mentioned region.

The exclusive rights of the owner of a registered trademark are protected by Federal Law 37/1992, which details registration procedures and recognizes well-known trademarks.

Patent protection is provided by Chapter II of Law 31/2006, which regulates registration procedures.

Copyright and related rights are disciplined in Law 40/1992 on the protection of intellectual works. The legislation of the United Arab Emirates recognizes the author of intellectual works both moral and economic rights.

The discipline of industrial designs is contained in Chapter III of the Law 31/2006, detailing registration procedures and legal protection.

Registration of intellectual property rights

Registration of trademarks, patents and industrial designs are, respectively, the responsibility of the Trade Marks Department and the Department of Industrial Property, both within the Ministry of Economy.

Copyright protection, as well as the collection of royalties accruing to the author, are ensured by the Copyright Department, within the Ministry of Economy.

Rights on geographical indications are not protected as such, but attributed by the registration of a trademark.

Sanctions regime

Geographical Indication Infringements

Despite the lack of a dedicated legislation, the Federal Law 37/1992 on trademarks prevents the use of misleading geographical indications as components of trademarks. In particular,

Article 3, paragraphs 6 and 9, provide that trademarks containing geographical names intended to designate goods or services not originating from a limited geographical area of reference cannot be registered.

Trademark Infringements

Pursuant to Article 37 of Federal Law 37/1992, the counterfeiting of a registered trademark and the use in bad faith of a counterfeit or imitated trademark, are punishable by a fine of 5,000 dirham (about 1,180 euro). The same penalty applies to the use in bad faith of a registered trademark to designate products of third parties, as well as to the sale, supply or storage for sale of products or services bearing a counterfeit or illegally reproduced trademark. Furthermore, Article 38 of Federal Law 37/1992 establishes that the use of trademarks ineligible to registration, the misrepresentation of a distinctive sign as a registered trademark, along with false statements on categories of protected products, are punishable by imprisonment up to one year and a fine from 5,000 to 10,000 dirham (about 1,180 to 2,370 euro). In case of recidivism, the Court may order the closure of industrial and commercial premises involved in illegal activities from 15 days to six months.

Patent Infringements

Article 62 of Federal Law 31/2006 states that the supply of false information or fraudulent documents in order to obtain a patent are punishable by imprisonment from six months to two years and a fine from 5,000 to 100,000 dirham (about 1,180 to 23,750 euro). The same penalties apply to false claims of inventorship. Moreover, Article 63 of Federal Law 31/2006 provides that, pending civil or criminal proceedings, the Court may order the seizure of infringing merchandise and the destruction of the equipment used to commit the offense.

Industrial Design Infringements

Article 62 of Federal Law 31/2006 provides that the supply of false information or fraudulent documents in order to obtain the registration of an industrial design are sanctioned with imprisonment from six months to two years and a fine ranging from 5,000 to 100,000 dirham (about 1,180 to 23,750 euro). Furthermore, Article 63 of Federal Law 31/2006 provides that, pending civil or criminal proceedings, the Court may order the seizure of infringing merchandise and the destruction of the equipment used to commit the offense.

Copyright Infringements

Article 37 of Federal Law 7/2002 specifies that copyright infringements, including communication to the public of any protected work, artistic performance, phonogram, broadcast program, through the Internet or any other means, is subjected to a term of

imprisonment of two months and a fine from 10,000 to 50,000 dirham (about 2,390 to 11,960 euro).

The same penalties apply to the sale, rental and circulation of protected works. In case of recidivism, imprisonment is increased to six months and the fine to 50,000 dirham (about 11,960 euro).

Article 38 of the Federal Law 7/2002 stipulates that the production and import of any device aimed at circumventing technological protection measures used by the copyright holder, such as encryption or the like, as well as the effective removal and neutralization thereof, are sanctioned with imprisonment up to three months and a fine from 50,000 to 500,000 dirham (about 11,960 to 119,670 euro). In case of recidivism the penalties are increased to a nine months imprisonment and a fine of 200,000 dirham (about 47,870 euro).

Finally, Article 40 of the Federal Law 7/2002 provides that the Court may order the confiscation of pirated copies and equipment used to commit the crime, along with the suspension of commercial operations up to six months for the responsible company.

National Anti-Counterfeiting Authorities

The Federal Customs Administration of the United Arab Emirates (*UAE Federal Customs Authority*), within the Ministry of Finance, may seize, examine and acquire samples of goods suspected of violating intellectual property rights. In case of irregularities in import or export procedures, Customs officers can intervene upon request of the right holders.

Industrial property titles may be registered in the database of the Federal Customs Administration, thus allowing intervention *ex officio* for the seizure of counterfeit products.

The system is currently operating in the Emirates of Dubai, Sharjah and Ras al-Khaimah.

The Department of Economic Development (DED) is in charge of the administrative protection of intellectual property rights in each Emirate. Worth noting is that Dubai's DED has introduced a specific *Commercial Protection Division*, which examines complaints against counterfeiting and piracy. The sanctions imposed include the seizure of counterfeit or pirated goods and monetary fines.

The Police forces (UAE Police) of each Emirate are in charge of investigations on counterfeiting and copyright infringements in the United Arab Emirates. However, no specific unit for intellectual property-related crimes has been introduced to date.

Food safety

Competent authorities

The Emirates Standardization and Metrology Authority (ESMA) is responsible for the development and adoption of standards in the field of food safety.

To that end, ESMA represents the United Arab Emirates in the Gulf Standards Organization (GSO), which establishes health and safety standards for the production and import of food products, followed by member countries of the Gulf Cooperation Council (GCC).

The Ministry of Environment and Water (MOEW) of the United Arab Emirates is in charge of drafting the legislation on food safety, based on the recommendations of the Gulf Standards Organisation and the National Committee for Food Safety (NFSC). The Department of Health has the mandate to carry out food safety controls in each Emirate.

Repression of food fraud

The issue of food fraud is disciplined by legal provisions adopted in each Emirate, while a single Federal Law is currently pending approval.

More precisely, Article 16 of Law 2/2008 of the Emirate of Abu Dhabi punishes the preparation, processing, storage, transport, distribution and sale of harmful or adulterated foodstuffs. For the purposes of the law, food products are harmful if they are likely to create a risk to human health, due to non-compliance with hygiene and quality standards at any stage of production; while foodstuffs are considered adulterated if the quality or nutritional value have been intentionally modified for the worse without providing notice on the label.

If the above offenses concern harmful foodstuffs, the law mandates a term of imprisonment up to three months and a fine from 30,000 to 200,000 dirham (about 7,240 to 48,280 euro); while if the conduct involves adulterated products the term of imprisonment is reduced to two months and the fine ranges from 20,000 to 150,000 dirham (about 4,820 to 36,210 euro). Article 16 paragraph 4 also punishes the advertisement of harmful or adulterated food, carried out by any means of communication, with a fine of 10,000 dirham (about 2,410 euro). According to Article 16 paragraph 6 the penalties for the above offenses may be doubled in case of recidivism.

Worth noting is that a draft Law on Food Law Safety is currently being discussed at Federal level. The draft law mandates a term of imprisonment up to three years and a fine of two million dirham (about 500,000 euro) for food fraud.

Non-compliance with labeling requirements for food products is also punishable by a fine of 10,000 to 100,000 dirham (about 2,410 to 24,140 euro).

Significant is the prosecution of an attempted food fraud, irrespective of the prejudice or danger caused. Finally, the draft law sanctions the trade in food products after the expiration date with imprisonment up to one month and a fine from 20,000 to 200,000 dirham (about 4,820 to 48,280 euro). According to the legislative proposal, penalties will be increased up to the double in case of repeated offenses.

Actions and operations at national and international level

In 2014, the Department of Economic Development in Abu Dhabi has identified 184 cases of trademark counterfeiting and seized 55,532 items, amounting to a loss of 28,577,184 dirham (about 6,895,970 euro) in terms of lost earnings for companies producing the corresponding original items. The operations concerned 8,266 items of clothing, shoes and accessories; 5,606 cosmetic products; 31,427 electronic devices and phones; 3,101 motor vehicles spare parts; 529 foodstuffs. Investigations also unveiled 33 cases of copyright infringements.

In September 2015, the Department of Economic Development in Dubai has also conducted a major operation against counterfeiting, with the seizure of more than 3.5 million fake products, especially smart phones and glasses. Identified during risk-based inspections in three warehouses at Al Qusais, the items were intended both for the domestic market and for export. Approximately 2.6 million items were reproductions of 18 well-known sunglasses trademarks, for a commercial value of 125 million dirham (about 31,324,150 euro). A third inspection resulted in the identification of 61,768 counterfeit smart phones, along with 899,000 accessories, amounting to 70 million dirham. (about 17,541,525 euro).

Databases and statistics on counterfeiting and food fraud

No national databases and annual statistics on seizures of counterfeit products or on food fraud are currently available.

Acronyms

AA.SS.LL.	Aziende Sanitarie Locali
ACIST	Anti-Counterfeiting Intelligence Support Tool
AGROCERT	Agricultural Products Certification and Supervision Organization
AECOSAN	Agencia Española de Consumo, Seguridad Alimentaria y Nutrición
ANCP	Autoritatea nationala pentru protectia consumatorului
ANSES	Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail
ANSVSA	Autoritatea Națională Sanitară Veterinară și pentru Siguranța Alimentelor
ASAE	Autoridade de Segurança Alimentar e Económica
BMDA	Bureau Marocain du Droit d'Auteur
CCTS	Comando Carabinieri Tutela della Salute
CNAC	Comitato Nazionale anti contraffazione
CONPIAC	Comité National pour la Propriété Industrielle et Anti-Contrefaçon
DGADR	Direção-Geral de Agricultura e Desenvolvimento Rural
DGAV	Direção-Geral de Alimentação e Veterinária
DGCCRF	Direction générale de la concurrence, de la consommation et de la répression des fraudes
DZIV	Državni zavod za intelektualno vlasništvo
EDB	Enforcement Database
EFET	Ενιαίος Φορέας Ελέγχου Τροφίμων
EFSA	European Food Safety Agency
EFTA	European Free Trade Association
EU	European Union
EUIPO	European Union Intellectual Property Office
Europol	European Police Office
FALSTAFF	Fully Automated Logical System To Avoid Forgeries & Fraud
FVA	Food and Veterinary Office
GEPAC	Gabinete de Estratégia, Planeamento e Avaliação Culturais
ICQRF	Ispettorato centrale della tutela della qualità e della repressione frodi dei prodotti agroalimentari
INAO	Institut national de l'origine et de la qualité
INAPI	Institut National Algérien de la Propriété Industrielle
INNORPI	Institut National de la Normalisation et de la Propriété Industrielle
INPI	Institut national de la propriété industrielle (France)

INPI	Instituto Nacional da Propriedade Industrial (Portugal)
Interpol	International Criminal Police Organization
IPERICO	Intellectual Property Elaborated Report of the Investigation on COUNTERfeiting
JFDA	Jordan Food and Drugs Administration
MADR	Ministerul Agriculturii și Dezvoltării Rurale
MAGRAMA	Ministerio de Agricultura, Alimentación y Medio Ambiente
MCCAA	Malta Competition and Consumer Affairs Authority
MIBACT	Ministero dei beni e delle attività culturali e del turismo
MIPAAF	Ministero delle politiche agricole alimentari e forestali
MiSE	Ministero dello Sviluppo Economico
NAC	Comando Carabinieri Politiche Agricole e Alimentari
NAF	Nucleo Anti-Frode
OLAF	Office européen de Lutte Anti-Fraude
OMPIC	Office Marocain de la Propriété Industrielle et Commerciale
OSIM	Oficiul de Stat pentru Invenții și Mărci
ONDA	Office National des Droits d'Auteurs (Algeria)
OTDAV	Organisme tunisien des droits d'auteur et des droits voisins
PIF	Posti d'Ispezione Frontaliera
RASFF	Rapid Alert System for Food and Feed
SEPRONA	Servicio de Protección de la Naturaleza
SIAE	Società Italiana Autori ed Editori
TRIPS	Trade Related Aspects of Intellectual Property Rights
UIBM	Ufficio Italiano Brevetti e Marchi
UIL	Urad republike Slovenije za intelektualno lastnino
UVAC	Uffici Veterinari per gli Adempimenti Comunitari
UVHVVR	Uprava RS za varno hrano, veterinarstvo in varstvo rastlin
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

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Agro-food sector

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Agro-food sector

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Agro-food sector

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Agro-food sector

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The present study, coordinated by the Directorate-General for the Fight against Counterfeiting - Italian Patent and Trademark Office (DGLC-UIBM), Ministry of Economic Development, and carried out with the contribution of the United Nations Interregional Crime and Justice Research Institute (UNICRI), examines the legal framework for the protection of Intellectual Property Rights in 19 Euro-Mediterranean countries, with a focus on the agro-food sector.

The first part provides a comparative analysis of national laws and criminal sanctions in force in the considered countries for the protection of Intellectual Property Rights and Geographical Indications, dwelling on relevant differences. The second part presents country-specific dossiers, dedicated to the national intellectual property framework and sanctions applicable to counterfeiting, with a particular reference to Geographical Indications and Appellations of Origin, as well as to the agro-food sector. Operations carried out by law enforcement agencies for the fight against counterfeiting are also showcased. Concerning the research methods, we examined databases maintained by WIPO and FAO to identify legal provisions on Intellectual Property Rights and food safety. Information was integrated by analyzing the websites of the competent national authorities. Further inputs were collected by conducting a survey on the protection and effectiveness of remedies available for Intellectual Property Rights protection. The survey was circulated to national intellectual property and food safety authorities, and to the private sector, notably to companies and law firms.

The research has highlighted the importance of coordination and cooperation among the national authorities in charge of the protection of Intellectual Property Rights and food safety in the Euro-Mediterranean area. The study has also demonstrated the value of appropriate measures against infringements, in view of protecting consumers' health and safety as well as legitimate producers. In this perspective the Declaration of Rome can lay the ground for establishing a proactive dialogue among Euro-Mediterranean countries and for convening ad hoc technical meetings dealing with specific thematic issues, building upon the spirit of cooperation which characterized the very same third conference of the Euro-Mediterranean Anti-counterfeiting Committees, held in Rome in November 2014.