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From: Presidency
To: Delegations
Subject: Regulation on geographical indications and quality schemes
- Presidency drafting suggestions on Articles 27-37

With a view to the meeting of the Working Party on Horizontal Agricultural Questions (Geographical indications and designations of origin) on 4 October 2022, delegations will find attached Presidency drafting suggestions on Articles 27-37 of the abovementioned proposal.

Chapter 3

Protection of geographical indications

Article 27

Protection of geographical indications

1. Geographical indications entered in the Union register of geographical indications shall be protected against:
 - (a) any direct or indirect commercial use of the geographical indication in respect of products not covered by the registration, where those products are comparable to the products registered under that name or where use of a name exploits, weakens, dilutes, or is detrimental to the reputation of, the protected name;
 - (b) 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’, ‘flavour’, ‘like’ or similar.
 - (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, **on** advertising material, **in** documents or information provided on ~~websites~~**online interfaces** relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
 - (d) any other practice liable to mislead the consumer as to the true origin of the product.

2. For the purposes of paragraph (1), point (b), the evocation of a geographical indication shall arise, in particular, where a term, sign, or other labelling or packaging device presents a **sufficiently** direct and clear link with the product covered by the registered geographical indication in the mind of the ~~reasonably circumspect~~ **average European** consumer **who is reasonably well informed, observant and circumspect**, thereby **leading the consumer to believe that the product in question is covered by the geographical indication** ~~exploiting, weakening, diluting or being detrimental to the reputation of the~~ registered name.
3. ~~p~~Paragraph (1) shall also apply to a domain name containing or consisting of the registered geographical indication.
4. The protection referred to in paragraph (1) also applies to:
- (a) goods entering the customs territory of the Union without being released for free circulation within that territory; and
 - (b) goods sold by means of distance selling, such as electronic commerce.
5. ~~The recognised G~~groups of producers or any operator that is entitled to use **a registered** ~~the protected designation of origin or protected~~ geographical indication shall be entitled to **request the custom authorities to** prevent all third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and are in breach of paragraph (1).
6. Geographical indications protected under this Regulation shall not become generic in the Union.

7. Where a geographical indication is a compound name which contains a term which is considered to be generic, the use of that term shall not constitute a conduct referred to in paragraph (1), point (a) and (b).

Article 28

Ingredients in processed products

1. Article 27 is without prejudice to the use of a geographical indication by operators in conformity with Article 36 to indicate that a processed product contains, as an ingredient, a product designated by that geographical indication provided that such use is made in accordance with honest commercial practices and does not weaken, dilute or is not detrimental to the reputation of the geographical indication.
2. The geographical indication designating a product ingredient ~~shall not~~**may** be used in the food name of the related processed product, **unless**~~except in cases of an agreement with a producer group representing two thirds of the producers~~ **notifies its disagreement to the user.**

Subparagraph 1 shall not apply to spirit drinks.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 84 supplementing this Regulation by additional rules on the use of geographical indications to identify ingredients in processed products referred to in paragraph (1) of this Article, **notably with reference to the use of comparable ingredients and the criteria to confer essential characteristics on the processed products.**

Article 29

Generic terms

1. Generic terms shall not be registered as geographical indications.
2. To establish whether or not a term has become generic, account shall be taken of all relevant factors, in particular:
 - (a) the existing situation in the areas of consumption;
 - (b) the relevant national or Union legal acts.
- ~~3. The Commission shall be empowered to adopt delegated acts in accordance with Article 84 supplementing this Regulation by additional rules for determining the generic status of terms referred to in paragraph (1) of this Article.~~

Article 30

Homonymous geographical indications

1. A geographical indication that has been applied for after a wholly or partly homonymous geographical indication had been applied for or protected in the Union, shall not be registered unless there is sufficient distinction in practice between the conditions of local and traditional usage and the presentation of the two homonymous indications, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled as to the true identity or geographical origin of the products.
2. A wholly or partly homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name for the actual territory, region or place of origin of the products in question is accurate.

3. For the purposes of this Article, a homonymous geographical indication applied for or protected in the Union refers to:
- (a) geographical indications that are entered in the Union register of geographical indications;
 - (b) geographical indications that have been applied for provided that they are subsequently entered in the Union register of geographical indications;
 - (c) appellations of origin and geographical indications protected in the Union pursuant to Regulation (EU) 2019/1753 of the European Parliament and of the Council¹; and
 - (d) geographical indications, names of origin and equivalent terms protected pursuant to an international agreement between the Union and one or more third countries.
4. The Commission shall **adopt an implementing act to remove**~~cancel~~ **from the Union register any**~~the~~ geographical indications registered in breach of paragraphs (1) and (2).
5. The implementing acts referred to in paragraph (4) shall be adopted without applying the procedure referred to in Article 53(2).

Article 31

Trade marks

A name shall not be registered as a geographical indication where, in the light of a trade mark's reputation and renown, registration of the name proposed as a geographical indication ~~could~~ **is liable to** mislead the consumer as to the true identity of the product.

¹ Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications (OJ L 271, 24.10.2019, p. 1).

Producer groups

1. A producer group shall be set up on the initiative of interested ~~stakeholders, including farmers, farm suppliers, intermediate processors and final processors~~ **producers or interested** stakeholders, as specified by the national authorities and according to the nature of the product concerned. ~~Member States shall verify that the p~~ **Producer groups shall** operate in a transparent and **non-discriminatory** democratic manner **allowing** ~~and that all producers~~ and that all producers of the product designated by the geographical indication **to** enjoy **a** right of membership in the group. Member States may provide that public officials, and other stakeholders such as consumer groups, retailers and suppliers, **may** also participate in the works of the producer group.
2. A producer group may exercise in particular the following powers and responsibilities:
 - (a) develop **and amend** the product specification and manage ~~internal~~ **own** controls that ensure compliance of production steps of the product designated by the geographical indication with the said specification;
 - (b) take legal action to ensure protection of the geographical indication and of the intellectual property rights that are directly connected with it, **including filing applications for actions with custom authorities, and to prevent or counter any measures which are, or risk being, detrimental to the image of their products;**
 - (c) agree sustainability undertakings, whether or not included in the product specification or as a separate initiative, including arrangements for verification of compliance with those undertakings and assuring adequate publicity for them notably in an information system provided by the Commission;

- (d) take action to improve the performance of the geographical indication, including:
- (i) development, organisation and conduct of collective marketing and advertising campaigns;
 - (ii) dissemination of information and promotion activities aiming at communicating the attributes of the product designated by a geographical indication to consumers;
 - (iii) carrying out analyses into the economic performance, sustainability of production, nutritional profile, and organoleptic profile, of the product designated by the geographical indication;
 - (iv) dissemination of information on the geographical indication and the relevant Union symbol; and
 - (v) providing advice and training to current and future producers, including on gender mainstreaming and equality.
- (e) combat counterfeiting and suspected fraudulent uses on the internal market of a geographical indication designating products that are not in compliance with the product specification, by monitoring the use of the geographical indication across the internal market and on third countries markets where the geographical indications are protected, including on ~~the internet~~ **online interfaces**, and, as necessary, inform enforcement authorities using confidential systems **where** available.

Recognised producer groups

1. Upon a request of producer groups fulfilling the conditions of paragraph 32, Member States shall designate, in accordance with their national law, one producer group as **the** recognised producer group for each geographical indication originating in their territory that is registered or is subject to an application for registration or for product names that are a potential subject for application for registration.
2. A producer group may be designated as recognised producer group subject to a prior agreement concluded between at least two-thirds of the producers of the product **designated by** ~~bearing~~ a geographical indication, accounting for at least two-thirds of the production of that product in the geographical area referred to in the product specification. As an exception, an authority, as referred to in Article 8(2), and a single producer, as referred to in Article 8(3), shall be deemed to be a recognised producer group.
3. In addition to the powers and responsibilities referred to in Article 32(2), a recognised producer group may exercise the following powers and responsibilities:
 - (a) ~~to liaise with intellectual property enforcement and anti-counterfeit bodies and participate~~ **represent the producers of a product designated by a geographical indication** in intellectual property enforcement networks **and towards anti-counterfeit bodies established by national or Union authorities** ~~as the geographical indication right holder~~;
 - (b) ~~to take enforcement actions, including filing applications for actions with custom authorities, to prevent or counter any measures which are, or risk being, detrimental to the image of their products;~~

- (c) ~~to~~ recommend to the national authorities binding rules to be adopted in accordance with Article 166a of Regulation (EU) No 1308/2013 for the regulation of the supply of products designated by a geographical indication;
- (d) ~~with a view to protecting the geographical indication in the internet domain name systems outside the jurisdiction of the Union, to register an individual, collective or certification trade mark depending on the trade mark system concerned, containing, as one of its prominent elements, a geographical indication and restricted to product conforming to the corresponding product specification.~~

4. ~~The powers and responsibilities referred to in paragraph 2 shall be subject to a prior agreement concluded between at least two thirds of the producers of the product designated by a geographical indication, accounting for at least two thirds of the production of that product in the geographical area referred to in the product specification.~~
5. Member States shall verify ~~carry out checks in order to ensure~~ that the conditions laid down in paragraph 2 are complied with. Where the competent national authorities find that such conditions have not been complied with, Member States shall annul the decision on the recognition of the producer group.

Protection of geographical indication rights in domain names

1. ~~Country-code top-level domain name registries established in the Union may~~**shall**, upon the request of a natural or legal person having a legitimate interest or rights, revoke ~~or transfer a **registered** domain name **or transfer it** registered under such country-code top-level domain~~ to the recognised producer group of the products with the geographical indication concerned, **if such domain name has been registered by its holder without rights or legitimate interest in the geographical indication or if it has been registered or is being used in bad faith and its use contravenes Article 27,** following a **The registries shall act following an** appropriate alternative dispute resolution procedure or judicial procedure, ~~if such domain name has been registered by its holder without rights or legitimate interest in the geographical indication or if it has been registered or is being used in bad faith and its use contravenes Article 27.~~
2. ~~Country-code top-level domain name registries established in the Union shall ensure that any alternative dispute resolution procedure established to solve disputes relating to the registration of domain names referred to in paragraph (1), shall recognise geographical indications as rights that may prevent a domain name from being registered or used in bad faith.~~
3. The Commission shall be empowered to adopt delegated acts in accordance with ~~Article 84~~ supplementing this Regulation by provisions entrusting EUIPO to establish and manage a domain name information and alert system that would provide the applicant, upon the submission of an application for a geographical indication, with information about the availability of the geographical indication as a domain name and, on optional basis, the registration of a domain name identical to their geographical indication. That delegated act shall also include the obligation for registries of ~~country-code top-level domain names, established in the Union, to provide EUIPO with the relevant information and data.~~

Conflicting Relationship between geographical indications and trade marks

1. The registration of a trade mark the use of which would contravene Article 27 shall be rejected if the application for registration of the trade mark is submitted after the date of submission to the Commission of the application for the registration of the geographical indication.
2. Trade marks registered in breach of paragraph (1) shall be invalidated by EUIPO and, when applicable, the competent national authorities.
3. A trade mark the use of which contravenes Article 27, which has been applied for, registered, or established by use in good faith within the territory of the Union, if that possibility is provided for by the legislation concerned, before the date on which the application for registration of the geographical indication is submitted to the Commission, may continue to be used and renewed notwithstanding the registration of a geographical indication, provided that no grounds for invalidity or revocation of the trade mark exist under Directive (EU) 2015/2436 or Regulation (EU) 2017/1001. In such cases, the use of the geographical indication, if then registered, and that of the relevant trade mark shall be permitted.
4. For geographical indications registered in the Union without the submission of a Union application for registration, the date of the first day of protection shall be deemed to be the date of submission to the Commission of the application for registration of the geographical indication for the purposes of paragraphs 1 and 3.
5. Without prejudice to Regulation (EU) No 1169/2011, guarantee or certification marks referred to in Article 28(4) of Directive (EU) 2015/2436 and collective marks referred to in Article 29(3) of that Directive may be used on labels, together with the geographical indication.

Article 36

Right of use

A registered geographical indication may be used by any operator marketing a product **which is in conformity with** the corresponding product specification or single document or an equivalent to the latter.

Member States shall ensure that any operator complying with the rules set out in this Title is covered by the verification of compliance of the product specification established pursuant to Article 39. ~~Member States may charge a fee to cover their costs of managing the controls system.~~

The circumstance by which a geographical indication consists of or contains the name of the estate of a single applicant producer shall not prevent other producers and operators from using the registered geographical indication provided that it is used to designate a product that is in conformity with the product specification.

Article 37

Union symbols, indications and abbreviations

1. The following Union symbols designed to mark and publicise geographical indications shall be established:
 - (a) a symbol identifying protected designations of origin of wine and of agricultural products; and
 - (b) a symbol identifying protected geographical indications of wine and of agricultural products and geographical indications of spirit drinks.

2. In the case of products originating in the Union that are marketed under a geographical indication, the Union symbol associated with it shall appear on the labelling and advertising material. The geographical indication shall appear in the same field of vision as the Union symbol. The labelling requirements laid down in Article 13(1) of Regulation (EU) No 1169/2011 for the presentation of mandatory particulars shall apply to the geographical indication.
3. — By way of derogation from **the first subparagraph (2)**, in the case of wine and spirit drinks ~~originating in the Union that are marketed under a geographical indication~~, Union symbols may be omitted from the labelling and advertising material of the product concerned.
4. — **In the case of spirit drinks**, ~~the~~ Union symbol for protected geographical indications established pursuant to paragraph (1)(b) may **appear on the labelling and advertising material** ~~be used in the description, presentation and labelling of spirit drinks the names of which are geographical indications~~.
5. Where wine, agricultural products or spirit drinks are designated by a geographical indication the indications ‘protected designation of origin’ or ‘protected geographical indication’ shall appear on the labelling **and advertising material** of wine, the indications ‘protected designation of origin’ or ‘protected geographical indication’ may appear on the labelling **and advertising material** of agricultural products and the indication ‘geographical indication’ may appear on the labelling **and advertising material** of spirit drinks, respectively.

The abbreviations ‘PDO’ or ‘PGI’, corresponding to the indications ‘protected designation of origin’ or ‘protected geographical indication’, may appear on the labelling **and advertising material** of wine and of agricultural products designated by a geographical indication.

6. Indications, abbreviations and Union symbols may be used in the labelling and advertising materials of processed products when the geographical indication refers to an ingredient thereof. In that case, the indication, abbreviation or Union symbol shall be placed next to the name of the ingredient that is clearly identified as an ingredient. The Union symbol shall not be placed in association with the name of the food within the meaning of Article 17 of Regulation (EU) No 1169/2011 or in a manner that suggests to the consumer that the processed product rather than the ingredient is the object of registration.
7. After the submission of a Union application for the registration of a geographical indication, producers may indicate on the labelling and in the presentation of the product that an application for registration has been filed in compliance with Union law.
8. — Union symbols indicating the protected designation of origin or protected geographical indication and the Union indications ‘protected designation of origin’, ‘protected geographical indication’ and ‘geographical indication’ and the abbreviations ‘PDO’ or ‘PGI’ as relevant, may appear on the labelling only after the publication of the act of registration of that geographical indication.
9. — Where an application is rejected, any products labelled in accordance with **the first subparagraph** ~~(6)~~ may be marketed until the stocks are exhausted.
10. The following may also appear on the labelling:
 - (a) depictions of the geographical area of origin referred to in the product specification; and
 - (b) text, graphics or symbols referring to the Member State and the region in which that geographical area of origin is located.

11. Union symbols associated with geographical indications entered in the Union register of geographical indications designating products originating in third countries, may appear on the product labelling and advertising material, in which case the symbols shall be used in conformity with paragraphs (2) and (4).
12. The Commission may adopt implementing acts ~~establishing the Union symbols for geographical indications~~, defining the technical characteristics of the Union symbols for geographical indications as well as ~~the~~ **technical** rules on their use and the use of the indications and abbreviations on products marketed under a registered geographical indication, including ~~rules concerning the appropriate linguistic versions to be used~~. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 53(2).
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