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| From: | General Secretariat of the Council |
| To: | Special Committee on Agriculture |
| Subject: | Regulation on geographical indications and quality schemes – <i>Presidency background document on delegation of tasks to EUIPO</i> |

Delegations will find in the Annex a Presidency background document on the delegation of tasks to EUIPO for an exchange of views at the Special Committee on Agriculture on 10 October 2022.

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on European Union geographical indications for wines, spirits and agricultural products and on agricultural product quality schemes, amending Regulations (EU) No 1308/2013, (EU) 2017/1001 and (EU) 2019/787 and repealing Regulation (EU) No 1151/2012

Introduction:

On 31 March 2022, the Commission published a proposal to revise the existing EU regulatory framework on geographical indications (GIs) for wines, spirits and agricultural products and on agricultural product quality schemes. The proposal (7639/22 REV 1 + ADD 1-3) aims to strengthen the Union's GI system, to promote the use of GIs throughout the Union and to reduce the time needed to register new GIs.

Other objectives are to harmonise provisions on:

- the procedure for the registration, amendment or cancellation of GIs for all three sectors;
- the protection of geographical indications in all three sectors;
- controls in the agricultural products and spirits drinks (given the specificities of the wine sector, the Commission proposed to maintain the specific control rules of the CMO Regulation (EU) No 1308/2013 for this sector).

The present proposal reflects the outcome of an extensive consultation process. An initial impact assessment was published in October 2020, followed by a public consultation open from 15 January 2021 to 9 April 2021, as well as targeted consultations with Member States and relevant organisations in the field.

The main challenges resulting from the consultation were:

- preventing fraud and counterfeiting of GIs, especially in view of the increasing abuse of the reputation of GIs on the internet
- providing greater power and responsibility for producer groups to manage, promote and enforce their GIs
- ensuring higher production sustainability outcomes of GI products.

The Commission proposal provides for technical assistance of the European Union Intellectual Property Office (EUIPO) to increase efficiency of the procedures, i.e. to reduce the registration time and to improve the quality of examination of applications. Registration itself and overall responsibility for the policy remains with the Commission.

State of play:

The French Presidency scheduled five meeting days of the Working Party on Horizontal Agricultural Questions (Geographical Indications and Designations of Origin) (WP HAQ) and focused on the main innovations proposed by the Commission including the articles on the EUIPO. The discussion provided better understanding of the Commission's intentions and the identification of the elements that require in-depth reflection in the Council. The summary of discussion held during the French Presidency is available in the Progress Report (9256/2/22). During the Working Party the information that the designated Office is already currently carrying out actions concerning the examination of applications was highlighted. The Commission still takes the final decision and is legally responsible for the tasks performed.

The Czech Presidency took over the discussion and scheduled seven Working Party meeting the 12 July. At the Working Party meeting on 20 September 2022, the Presidency suggestions on text revision of the articles relating to the EUIPO were presented (12234/22), specifically the Articles 17(5), 19(10), 23(7), 25(10), 26(6), 34(3), 35(2), 46-47 and 82. To limit the frame of the delegated acts the Presidency in its suggestions specified the tasks intended for EUIPO. The above-mentioned Articles contain provisions on:

- Scrutiny and publication for opposition – Art. 17(5)
- Union opposition procedure – Art. 19(10)
- Union register of geographical indications - Art. 23(7)
- Amendments to a product specification – Art. 25(10)
- Cancellation of the registration – Art. 26(6)
- Protection of geographical indications rights in domain names – Art. 34(3)
- Conflicting trade marks – Art. 35(2)
- Scrutiny of third country geographical indications - Art. 46
- Monitoring and reporting - Art.47, no amendments proposed here
- Amendments to Regulation (EU) 2017/1001 – Art. 82, no amendments proposed here.

At the same meeting the Commission provided a document containing a comparative table of the tasks already performed by the EUIPO and those, which are newly proposed in the Presidency suggestions (WK 12057/2022).

The discussion at the meeting on the 20 September 2022 showed that a majority of Member States is not in favour of delegating the tasks to EUIPO, with the transfer of the examination of applications being particularly problematic. The justification is the lack of expertise of EUIPO in the agricultural aspects of applications. According to the information from the Commission, EUIPO has been carrying out this work for 4 years already. The discussion also showed that delegating administrative tasks to EUIPO does not pose problems to the Member States. The group of Member States not opposing the delegation of tasks to EUIPO accepted the Presidency suggestions, some Member States have not commented this issue.

At the meeting of the Committee on Agriculture and Rural Development of the European Parliament on 29 September 2022, the working document with the possible way forward of the proposal was presented (PE719.786v01-00). The European Parliament acknowledges EUIPO's expertise and competencies in the matter of protection of intellectual property rights but denies the Office to have the necessary agricultural expertise and proposes the assessment of applications to be performed by DG AGRI.

Way forward:

Against this background, the Presidency invites the SCA to express its views on the two following options regarding the delegation of tasks to EUIPO:

Option 1

During the discussion in the WP HAQ, some Member States opposed the delegation of tasks that need agriculture expertise to EUIPO, but the majority supported the delegation of administrative tasks. Therefore, as the delegation of administrative tasks was accepted, option 1 is for EUIPO to handle only the administrative tasks, such as translation of the application, translation of the documents to make them publish, publication in Union register, managing the Union register, etc. leaving the legal responsibility for the main tasks on the Commission.

The argument for this solution is to give priority to a thorough, accurate and expert examination of the GIs applications by the representative of DG AGRI. The aim is to focus on improving existing tools and providing additional support to producers, Member State authorities and other stakeholders, with an emphasis on advice.

Option 2

As the Member States were opposing the delegation of tasks to EUIPO on the ground of agriculture expertise needed for some tasks, the option 2 would be to include support of DG AGRI on these tasks to ensure providing the expertise requested, while EUIPO would take them on. This would explicitly concern tasks like scrutiny of the applications for registration, dealing with Union amendments, checking the admissibility of oppositions, etc. EUIPO would formulate and transmit its opinion to the Commission. DG AGRI would then assess the EUIPO opinion and proceed according to the provisions of the Commission's proposal. The tasks, which are purely administrative, would be delegated to EUIPO as in option 1.

Question:

Which one of those two options is preferable for Member States?
