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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

on geographical indication protection for craft and industrial products

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754

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Executive Summary Sheet

Impact assessment on a Proposal for a Regulation of the European Parliament and of the Council concerning geographical indication protection for craft and industrial products

A. Need for action

Why? What is the problem being addressed?

At EU level, special or *sui generis* geographical indication (GI) protection has been established for wines, spirit drinks, aromatised wines, as well as agricultural products and foodstuffs. However, there is currently no harmonised or unitary GI protection for craft and industrial (CI) products at EU level. Sixteen EU Member States have national *sui generis* GI schemes in place to cover CI products. These regimes differ in terms of protection, administration, fees, and do not offer producers protection beyond the national territory. Other Member States have no GI protection scheme in place at national level for CI products and provide for the use of consumer protection laws or trade marks. When producers of CI products seek protection throughout the EU, they can only do so separately in each Member State as available at national level. This situation may be a disincentive to investment in the traditional crafts in the EU, adding up to increased costs and legal uncertainty for producers.

The absence of EU-level protection for CI products is not only an internal issue, though. In November 2019, the EU acceded to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, a treaty administered by the World Intellectual Property Organization. The Geneva Act offers a route to obtain protection of GIs regardless of the nature of the goods to which they apply, including handicrafts and industrial products. While the EU should meet its international obligations under the Geneva Act and establish a protection scheme for CI products at EU level, there is still room for manoeuvre on how to do this in the most cost-effective way.

The Commission announced in its communication of 25 November 2020 entitled 'Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' (COM(2020) 760 final) that it would consider the feasibility of a GI protection system for non-agricultural products at EU level.

The initiative aims to address two main problems in particular. The first problem relates to the limits of international protection for CI GI products. In the absence of EU level protection in place, the EU cannot secure protection in third countries for GIs for CI products originating in the EU by using the Lisbon/Geneva route, as there can be no EU registration to start with. The EU also has to refuse protection of GIs for CI products originating in third countries, as such protection is not available at EU level. Furthermore, the EU cannot grant protection of GIs for CI products via bilateral trade agreements by means of including GIs for CI products in the list of GIs to be protected by such agreements. The second problem relates to missed opportunities for European CI producers. Due to a complex landscape of available protection routes in the EU (EU trade mark, EU collective mark, national GI right where available, national collective mark, national certification mark where available), it is hard for producers to navigate towards obtaining and enforcing protection. Discrepancies among various protection routes result in complicated and costly ways of securing protection that are unworkable for a typical cluster of small firms producing CI products. Moreover, the variety and divergence of national initiatives results in legal uncertainty for producers, may mislead consumers, weaken intra-Union trade, and make way for abuses of GI infringements offline and online.

What is this initiative expected to achieve?

The general aim of the initiative is to enable effective fulfilment of the EU's obligations under the

Geneva Act of the Lisbon Agreement, and to maximize profits from the EU's accession to the Lisbon system for producers in the EU and from bilateral trade agreements. Furthermore, it aims to create a functioning internal market for geographically linked CI products by establishing an efficient and harmonised regulatory framework for their protection.

The specific objectives are set to evaluate how to achieve compliance with the Geneva Act obligations in the most efficient and effective way. In particular the new system should achieve: (i) Applicant friendly and affordable registration system; (ii) Effective and affordable system of control and enforcement; and (iii) Low cost for public authorities.

What is the value added of action at the EU level?

The problem of regulatory fragmentation would be effectively solved at EU level. An EU initiative could provide for equal protection conditions in all Member States, thus creating legal certainty and incentives for investment in geographically rooted CI products. In comparison, the variety and divergence of national initiatives results in legal uncertainty for producers seeking protection, mislead consumers, impede intra-Union trade, and make way for unequal competition in marketing products of a special, geographically rooted quality.
An EU-wide approach would also enable the EU to fully benefit from the opportunities offered by the international system of appellations of origin and GIs (Lisbon system). National protection systems alone cannot achieve this objective, as only those Member States which are parties to the Lisbon Agreement may maintain registrations and submit new applications in this limited framework.

B. Solutions

What legislative and non-legislative policy options have been considered?
Is there a preferred choice or not? Why?

- **Baseline – No change**: The current fragmented regulatory framework in the EU and the lack of recognised protection at international level.
- **Policy option 1 – Recommendation**: This option would consist of adopting a recommendation at EU level, encouraging Member States to establish national protection systems in order to certify the link between specific product qualities and the origin of CI products.
- **Policy option 2 – Approximation of national laws**: This option would consist of adopting an EU directive in order to approximate national laws on the protection of GIs for CI products. By a directive, the EU would create obligations to achieve specific objectives for the protection of GIs, for example as to the term and scope of protection, the territorial link, and procedural aspects. Producers could obtain national GI titles registered at national level. No EU GI title would be created.
- **Policy option 3 – Extending the GI protection system for agricultural products to GIs for CI products:** Under this option, a GI protection system for CI products would be integrated into the existing GI protection schemes that cover agricultural products and foodstuffs. Under the proposed revision of agricultural GI schemes, Member States would continue with a preliminary scrutiny procedure at the national level. At the EU level, the revision of the GI system would give powers to the Commission to outsource the scrutiny of applications and oppositions to an agency (most likely EUIPO). Under this option, the ongoing revision in the agri-food sector would harmonise the current monitoring and enforcement system and extend it to cover also CI GIs.
- **Policy option 4 – Trade mark reform:** This option would consist of reforming the EU trade mark system, in particular the EU trade mark regulation (EUTMR), so as to make available to producers of CI products the possibility to apply for the registration at EU level of a name guaranteeing a specific product quality linked to a geographical region. This option could be based on the reform of either the EU collective mark or the EU certification

mark. In respect of the EU certification, Option 4 would require removing the current prohibition of certifying geographical origin. In respect of the EU collective mark, Option 4 would require introducing the function of certifying the "quality-geographical origin" link to the collective mark. In addition, both the EU collective mark and the EU certification mark would have to be adapted in order to comply with requirements in provisions of the Geneva Act concerning the scope of protection.

- **Policy option 5 – Self-standing EU regulation creating *sui generis* GI protection**: This option would consist of adopting an EU regulation to establish a *sui generis* GI protection scheme for CI products. It would build on the existing GI regime for agricultural products but adapt it further than PO3 to crafts and industrial products. CI GIs would be protected by an EU title in all EU Member States. Under this option, the following sub-options would be possible:
  - **5.1. Territorial link: 5.1.A.** *PDO:* Under PDO protection, the quality or characteristics of the product are essentially or exclusively linked to the particular geographical environment of the place of origin; and all stages of production, processing or preparation must take place in the defined geographical area. **5.1.B.** *PGI:* Under PGI protection, a particular quality, reputation or other characteristic of the CI product are essentially attributable to its geographical origin; at least one of the stages of production, processing or preparation takes place in the defined geographical area.
  - **5.2. Involvement of national authorities in the registration procedure: 5.2.A.** *Two-stage system***:** The first stage would be at the level of Member States, where national or local authorities would play a first examination role over local producers' agreed product specifications and GI applications. The second stage would be at EU level, with an EU entity taking a decision on registration, where no fees would be charged. **5.2.B.** *One-stage system*: National authorities would not participate in the examination and registration, and local producers would go directly to the EU level to have their GIs registered.
  - **5.3. EU entity in charge of registration at EU level and at international level: 5.3.A.** The *European Commission* would be in charge of the EU level stage of registration and act also as the Competent Authority under the Geneva Act of WIPO's Lisbon Agreement. **5.3.B.** The *specialised IP Agency, EUIPO* would be in charge of the EU level stage registration and would also act as Competent Authority under the Geneva Act.
  - **5.4. Control and enforcement**: **5.4.A**. *Replicating the control and enforcement model of the GI agricultural schemes* (see PO3). **5.4.B.** *Streamlined control with a strong enforcement model:* this sub-option would foresee the possibility to introduce self-certification; random inspections by national authorities (or delegated certification bodies), coupled with a deterrent system of fines; streamlined reporting obligations by national authorities; and the enforcement scheme under the currently revised agricultural GI system, with a domain names' alert system to fight online GI abuses.
  - **5.5 Co-existence of EU and national titles and regimes: 5.5.A.** CI GIs would be protected by an *EU title that replaces the existing national GI regimes* and absorbs national GI titles. **5.5.B**. *Introducing an EU GI title for CI products, while keeping a parallel system for national GI applications*.

The preferred policy option is **PO5: Self-standing EU Regulation.** The overall preferred option package is a <u>combination of sub-options **5.1.B, 5.2.A, 5.3.B, 5.4.B and 5.5.A**</u>.

5.1.B because in the case of CI products, the link to a specific geographical area is predominantly based on the history of the product and on distinctive traditional know-how and methods of production, and not so much on the link to elements of the geographical environment such as soil or weather conditions. Most CI products would thus not qualify for protection on the basis of the

latter link by means of a PDO. Therefore, a PGI scheme is better suited for the characteristics of CI GI products.

5.2.A because involvement of national authorities in the first stage would allow for relying on local and regional expertise necessary to assess product specifications. It would also be easier for local micro/artisanal producers to communicate in their own language, interact with an administration they are familiar with, and receive any other necessary guidance and support.

5.3.B because the EUIPO is the EU's specialised IP agency with proven experience in handling the registration of other IP rights at EU level. EUIPO has advanced IT tools that could extend to support the new CI GI right. EUIPO can also rely on its established expertise and network in cooperating with IP offices of Member States. Further efficiency gains would be achieved by using EUIPO's appeal body (Boards of Appeal). Finally, as to the role of Competent Authority in the Lisbon system, EUIPO currently has the same capacity in respect of two other international registration systems administered by WIPO and can also rely on such institutional knowledge.

5.4.B because it would establish a control system that would be adapted to the CI GI market which is very diverse and small. Self-declaration may be seen as an affordable option for micro companies and self-employed artisanal. It would be coupled with a system of random *ex-officio* checks by public authorities and high fines for non-compliance that aims at deterring possible fraud behaviour by producers. Enforcement would be reinforced, first, by extending checks over CI GI products "in transit", and, second, by introducing an alert system to tackle abusive domain names registrations of CI GIs. Reporting obligations on national authorities to the Commission would be proportionate.

5.5.A because due to the current heterogeneous regulatory approach to protecting geographically rooted craft and industrial products, co-existence would imply harmonization of highly divergent national laws in Member States. Harmonization might create a disproportionate amount of regulatory and administrative burden and require continuous investment to maintain convergence between national protection systems. Replacement of national GIs by the EU framework has the advantages of establishing a unique regulatory framework throughout the Internal Market, creating legal certainty as well as predictable and relatively low costs for producers. Moreover, an EU framework will permit the development of geographical indications by providing a more uniform approach.

Who supports which option?

Producers of CI GIs, the European Parliament, the European Committee of the Regions, the European Economic and Social Committee, nine Member States (qualified majority) and academia strongly support the establishment of a *sui generis* GI scheme under Option 5, including support for the preferred combination of sub-options.

Four Member States support the baseline option of maintaining the status quo and are of the view that trade mark protection provides for adequate means to rely on.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

For producers: All EU producers can obtain EU-wide GI protection for CI products. Such protection encourages producers' cooperation, strengthens local supply, creates niche markets, and encourages producers' cooperation with local authorities. As within the GI system for agricultural products, producers can advertise the protected GI by a logo on the product labelling. At international level, the preferred option enables EU producers to seek international protection for their CI products available in other parties to the Geneva Act, and enables third countries or organisations parties to the Geneva Act to obtain GI protection for their CI products in the entire EU territory. It also allows for increased protection for EU CI producers in third markets such as China, Russia or India through robust GI provisions in bilateral trade agreements concluded by the EU.

For consumers: Consumers, who are often willing to pay a premium for protected GI products, are better informed.

For the public: The preferred policy option protects geographically rooted products in the interest of the wider public, making the best out of local expertise and heritage, and stimulating activities like tourism, in particular in rural or less developed regions (very relevant in particular in the COVID-19 aftermath).

For the EU as global policy player: The preferred option further contributes to defend the EU's leading role in the international arena in promoting the *sui generis* GI system and the highest possible level of protection for all GI products.

What are the costs of the preferred option (if any, otherwise main ones)?

An EU body will have to manage the core activity of the GI registration system for CI products and obtain the operational experience and specialised skills that it is currently missing in the field. Member States will have to create a framework, too. Even if experience shows that in the agricultural field this burden can be light, an entirely private-public system of control and enforcement is by definition less costly for public authorities. Finally, the possibility for producers to self-declare compliance over time, for example, once the GI title is granted can also lower the costs.

An estimation of annual costs in euro for one GI is presented below:

Action	Producers group	Authorities		Total
		National	EU	
Registration	15,000	7,500	17,000	39,500
Verification/Control	5,700	100	0	5,800
Enforcement & management	3,000	3,900	0	6,900
Total	23,700	11,500	17,000	52,200

Source: Own calculations based on VVA & AND International (2021)

How will businesses, SMEs and micro-enterprises be affected?

See benefits for producers above.

Will there be significant impacts on national budgets and administrations?

Member States' authorities (national IP Offices or other departments) will face proportional implementing costs as consequence of establishing an administrative infrastructure to take charge of the national stage of the registration procedure. Currently, this is estimated at 1 FTE or part time engagement of two examiners.

Will there be other significant impacts?

There are no other significant impacts to be expected.

D. Follow-up

When will the policy be reviewed?

After the entry into force of the preferred option, the Commission will monitor its implementation with a view to assessing its effectiveness. The initiative could be considered as successful if it is appealing and used by local communities; improves the situation of GI producers as well as generate local spill-over effects by contributing to overall increase in wealth, to improvements in employment, particularly for women, and demographic conditions as well as to the development of sustainable tourism.