



EUROPEAN COMMISSION

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C(2022) 7415 final*

*Bodo Ramelow
Präsident des Deutschen Bundesrates
Leipziger Straße 3 - 4
D – 10117 BERLIN*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council on geographical indications protection of 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 {COM(2022) 174 final}.

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’, the Commission committed to propose a Union system of geographical indications (GIs) protection for non-agricultural products. The proposal, which builds on an impact assessment, delivers on this commitment. It aims at establishing a directly applicable geographical indications protection for craft and industrial products at Union level, improving the position of producers to protect their craft and industrial products throughout the Union against counterfeiting, and giving them incentives to invest into these products. The proposal also aims to improve the visibility of authentic craft and industrial products on the markets and therefore benefit consumers. It also has the objective to contribute to rural development and help regions, in which producers operate, by creating new opportunities for tourism, keeping and attracting a qualified workforce as well as by safeguarding their cultural heritage. Furthermore, the proposal aims to ensure that producers can fully benefit from the international framework for the registration and protection of geographical indications (‘Lisbon system’)¹.

The functioning of the internal market is hampered by fragmented national systems to protect geographically rooted craft and industrial products. The proposal will create a functioning internal market for these products by establishing an efficient and harmonised regulatory framework for their protection. In addition, the producers will

¹ In November 2019, the EU acceded to the Geneva Act of the Lisbon Agreement on Appellations of Origins and Geographical Indications, a treaty administered by the World Intellectual Property Organization (WIPO)

profit fully from the EU's accession to the Lisbon system for producers in the EU and from bilateral trade agreements. In particular, the new system will achieve: (i) an applicant-friendly and affordable registration system; (ii) an effective and affordable system of control and enforcement; and (iii) low costs for public authorities and SME producers.

The Commission is pleased that the Bundesrat shares the view that action at EU level, as envisaged in the proposal, is required to further develop the protection of intellectual property for products with a geographical link in the Union. The proposal presented by the Commission is currently in the legislative process involving the European Parliament and the Council. The Bundesrat's Opinion has been made available to the Commission's representatives in the ongoing negotiations of the co-legislators, and will inform this process.

In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex.

The Commission hopes that the comments provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Thierry Breton
Member of the Commission*

The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following comments grouped by topic.

*1. As far as the **requirements for geographical indications protection** are concerned, that are laid down in Article 5, the Commission considers that the current proposal provides a balanced solution for producers and offers clarity and legal certainty for consumers. The Commission takes note of the Bundesrat's concerns that the eligibility conditions for granting protection for geographical indications would not be sufficiently strict.*

The Commission would like to flag out in this respect that there is a need to be cautious in not to setting too strict conditions in order to remain consistent with the approach taken for agricultural products. The conditions set out in Article 5 of the draft proposal correspond to those in the geographical indications regulation for agricultural products, which have been in force for decades. They establish the conditions for a geographical indication, which are by definition less strict than the conditions for a protected designation of origin, where the link between geographical origin and the product qualities is much closer and where all the production steps must be taken in the geographical area.

If there would be a substantial divergence from the conditions as set out in the geographical indications regulation for agricultural products, there would be a risk of creating legal uncertainty as it is proposed to use the same logos as for agricultural products. Using the same logos without the corresponding level of protection could confuse consumers. Overly strict eligibility conditions could make it also more difficult to achieve the objective of absorbing existing national geographical indications titles granted to regional products in order to make sure not to remove national property protection without replacing it with EU protection. It should be noted that the existing national geographical indications titles would not benefit from lower eligibility conditions than future geographical indications.

Finally, it should be taken into account that the international legal framework (notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Geneva Act) does not include any requirement that the production step carried out in the geographical area has to be an essential production step. Core eligibility requirement is the link between the origin of the product and its qualities. However, in Recital 5 the proposal clarifies that 'in particular in view of the potential of geographical indications to contribute to sustainable and highly skilled jobs in rural and less developed regions, producers should aim at creating a substantial proportion of the value of the product designated by a geographical indication within the defined geographical area'.

2. As far as the possibility to allow the **co-existence of the national protection schemes and the EU-wide system**, the Commission takes seriously the concerns expressed by the Bundesrat, however it would like to make the following clarifications.

Under the proposal, the new EU protection for craft and industrial products geographical indications would replace existing specific national geographical indications regimes. Subject to certain conditions, EU wide protection would be granted to names protected under the specific national geographical indications regimes. This would be in line with the geographical indications schemes for agricultural products, resulting in an EU geographical indications regime uniformly based on EU-level rights only.

Keeping a single EU regulatory framework, throughout the single market for producers, would lighten the burden on Member States and administrative bodies. First, because they would not need to invest on national geographical indications schemes but on the first-stage procedure, which is lighter as it does not require registration at national level. This is especially important for those Member State who do not yet have a geographical indications system and prefer to keep the costs low. Second, there would be no need to create rules to avoid regulatory conflicts and overlaps between the EU and the national levels. Third, the new EU regulatory framework, which would incorporate existing national geographical indications titles, would be used for the purposes of granting international protection through the Lisbon route. To absorb existing national geographical indications by the EU scheme, the owners would have to express their interest to do so. Last but not least, the Commission would like to reassure the Bundesrat that the EU regime will not require producers to reveal their trade secrets to get protection nor will it prevent the producers from protecting their products with a collective or certification mark at national level in case they are not able to agree on the product specification.

The Commission's approach has the advantages of creating a unique regulatory framework throughout the internal market that would provide legal certainty as well as predictable and relatively low costs for producers. Moreover, an EU framework for the development of geographical indications through a uniform approach will ensure fair competition between the producers of products bearing such indications and enhance the credibility of products in the consumers' eyes.

3. Concerning the **maintenance of national trademarks**, the Commission would like to reassure the Bundesrat that the purpose of the proposal is not to replace all existing protected names, including trademarks, by geographical indications. The criteria for geographical indication protection include the need to give evidence of a link between a given characteristic of the product and the geographical area. Like for all other criteria, examination will be made on a case-by-case basis. Protection as a trademark remains separate.

The proposal regulates also a co-existence between geographical indications for craft and industrial products and trademarks along the lines that already exist in the agricultural sector. In particular, a name shall not be registered as a geographical

indication where in light of a trademark's reputation and renown, registration of the name proposed as a geographical indication could mislead the consumers as to the true identity of the product. In addition, a trade mark may co-exist with the geographical indication, as it is the case currently for agricultural products. According to Article 42(4), a trademark, the use of which would conflict with the geographical indication and which was applied for, registered, or established by use in good faith within the territory of the Union before the date on which the application for registration of the geographical indication is submitted to the Office, may co-exist with the geographical indication.

4. To reduce the burden on producers and public authorities, the proposed Regulation provides for the possibility of introducing a lighter control system based on self-declaration (as an alternative to a system based on third party controls already known from the control system for agricultural geographical indications). Such lighter system is tailored to the particularities of craft and industrial products and its producers (e.g. micro companies and self-employed artisans) as it gives to the producer's due diligence a stronger weight notably in niche markets where consumers can trust producers to be compliant with the product specification. This lighter approach is also justified because craft and industrial products, when compared to agricultural products, are not linked to food security. Sensitive issues such as hygiene (in the food chain) and animal welfare are typically not relevant.

However, self-declaration as a "stand-alone-instrument" may not deter potential fraud and may dilute the consumers' trust in craft and industrial products geographical indications. Therefore, this lighter control system is coupled with a system of random controls by public authorities and a set of effective, proportionate, and dissuasive penalties for non-compliance with the product specification that aims at deterring possible fraud behaviour by the producers.

The proposed Regulation does not affect the possibility of private enforcement (e.g. by producers or producer groups). Private enforcement takes its place alongside controls of public authorities. This public-private approach is particularly justified by the nature of geographical indications as public rights. Especially regarding producers of craft and industrial products, the involvement of public authorities can play an important role, as they may not have the necessary financial resources for private enforcement.

With regard to the Bundesrat's proposal that the costs resulting from court proceedings should be borne by the unsuccessful party (infringer or counterfeiter), the Commission would highlight that this is already a principle of cost allocation laid down in Article 14 of Directive 2004/48/EC on the enforcement of intellectual property rights, which is applicable to craft and industrial products geographical indications.

In addition, Article 48 (5) of the proposed Regulation leaves it to the Member States to establish provisions on costs resulting from controls carried out by their authorities ("Member States may collect fees (...)").

5. Concerning the **continuation of the protection of national geographical indications**, Article 67 lays down a fast-track registration procedure at EU level. This article guarantees that all national geographical indications that Member States want to protect at EU level will be protected, on the condition that they comply with the geographical indications requirements laid down in the proposal and that the relevant producer group submits the necessary documents. The procedure does not include an opposition phase, which makes these procedures much faster than the ordinary procedures.
