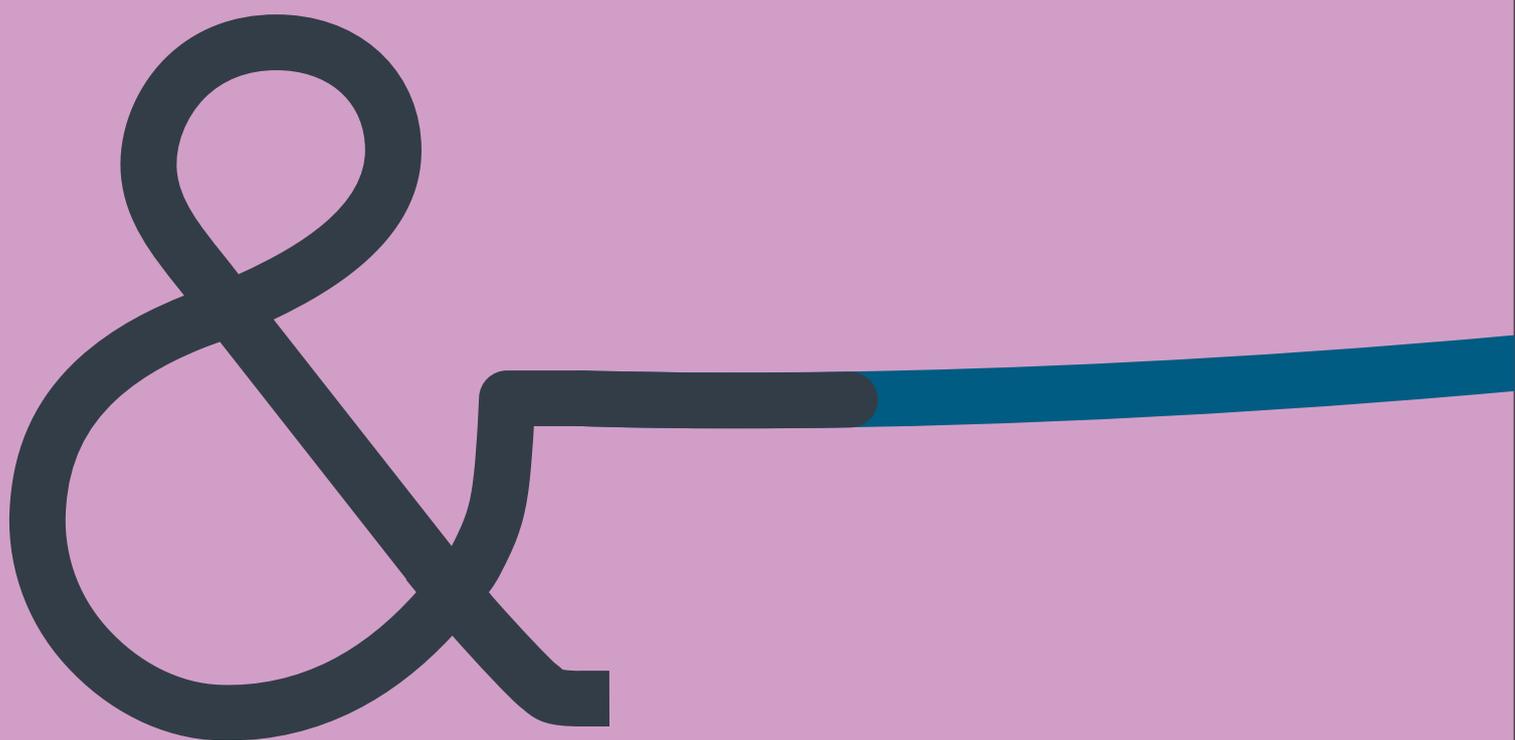


Bird & Bird

# The reform on the protection of geographical indications in the European Union

The European Parliament and Council adopted the new Regulation

*29th April 2024*



# The reform on the protection of geographical indications in the European Union

## *The European Parliament and Council adopted the new Regulation*

On 23 April 2024, **Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012 (hereinafter the “Regulation”)** was published in the Official Journal of the European Union.

The new Regulation will enter into force on the 20th day following its publication and will apply from 13 May 2024.

The legislative proposal was published on 31 March 2022 by the European Commission, at the same time as the [proposal for a regulation on the protection of geographical indications of handicraft and industrial products](#).

With the new Regulation, the European legislator aims to strengthen and broaden the protection of geographical indications by adopting a single text that will **dictate a common and uniform discipline for all geographical indications in the agri-food sector**.

In particular, as a result of the introduction of the new legislation, Regulation (EU) 1151/2012<sup>1</sup> in relation to agricultural products and foodstuffs is repealed in its entirety, while Regulation (EU) 1308/2013<sup>2</sup> and Regulation (EU) 787/2019<sup>3</sup>, which protect geographical indications for wines and spirits respectively, are being amended.

### *i. Background*

On 20 December 2021, the European Commission published a study showing that the existing regulatory framework for geographical indications was efficient and the protection objectives had been achieved at a general level with good results.

However, limitations in the system were identified at the same time, such as a lack of consumer knowledge and understanding of geographical indications in some Member States, limited enforcement and a weakness in the control system. It was also pointed out that environmental sustainability and animal welfare could be further integrated.

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<sup>1</sup> Regulation (EU) 1151/2012 on quality schemes for agricultural products and foodstuffs.

<sup>2</sup> Regulation (EU) 1308/2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

<sup>3</sup> Regulation (EU) 787/2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008.

In the light of public consultations and listening to the needs of the stakeholders in the sector, European authorities therefore concluded that **updating the current regulatory system will have positive impacts on the economy of the Union and of the Member States** (e.g., higher turnover of producers, less counterfeiting, more incentives to register geographical indications, positive effects in terms of employment and wine and food tourism, etc.).

## *ii. The pillars of the reform*

The new Regulation introduces a series of important innovations in the system of agri-food geographical indications summarised in the following pillars, over which the debate of the stakeholders in the sector has already heated up.

### Registration of geographical indications

Chapter 2 of the Regulation is devoted to the geographical indications registration procedure, which becomes a single, more simplified procedure for applicants based in an EU Member State or in a third country.

**The procedure consists of two phases:** a national phase consisting in the examination of the application for registration and a possible opposition to it at local level and a phase at Union level for which the European Commission remains solely responsible.

#### **i. National stage of the procedure**

An application for registration may only be submitted to the competent national authority by an **“applicant producer group”**, i.e., *“an association, irrespective of its legal form, composed of producers of the same product the name of which is proposed for registration”* (which, under certain conditions, may also be a single producer), possibly with the assistance of public bodies or other interested parties.

The application for protection must be accompanied by the product specification, the single document and all further documentation required by the Regulation (e.g., any limitations on the use and protection of the GI, contact details of the applicant producer group, competent authorities and certification bodies, etc.).

Each Member State will always conduct **a national opposition procedure**, which shall ensure at least the publication of the application for registration following its examination and shall provide for of **a period of at least one month** from the date of publication within which only persons having a legitimate interest established or resident in the Member State may file an opposition to the application for registration.

**If, the absence of any opposition or in case the opposition is overcome, the Member State concerned considers that the application meets the requirements of the Regulation, it shall submit the application for registration at the Union stage.**

The Member State must enclose in the application the single document, the accompanying documentation already provided at national level, a declaration stating that the GI meets the requirements of the Regulation, information on any transitional periods and possible oppositions as well as the updated product specification.

Member States shall also inform the Commission of any national judicial or administrative proceedings that may prejudice the registration of the GI.

To avoid infringement of the GI pending registration, following the submission of the application to the Commission, **the Member State concerned may also grant transitional protection** to the geographical indication at least at national level until the entry into force of the implementing act granting the application for registration of the GI.

#### **ii. Union stage**

The Commission shall examine the application for registration within six months from the date of reception of the application and shall verify that it contains all the required information and that it is free of manifest errors, also considering the outcome of the national examination and opposition procedure. If the Commission finds no irregularities, it shall publish in the Official Journal of the European Union the single document and the product specification relating to the GI applied for.

**Within three months from the date of publication** in the OJEU, the authorities of a Member State or of a third country, or a natural or legal person having a legitimate interest and established or resident in a third country, may submit to the Commission:

- a **a notice of comments** pointing out any error or providing additional information, including on a possible infringement of EU law (if these comments lead to substantial changes to the application, the Commission shall publish again the single document and the product specification in the OJEU);
- b **an opposition** to the application for registration contesting that the proposed geographical indication:
  - “does not comply with the definition of the geographical indication or with the requirements referred to in this Regulation, Section 2 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013 or Article 3(4) and Chapter III of Regulation (EU) 2019/787 as applicable”;
  - consists of a generic term within the meaning of Article 28, conflicts with a homonymous geographical indication within the meaning of Article 29, is liable to mislead consumers because of the reputation and length of time that a previous trade mark has been used (see Article 30) or conflicts with the name of a plant variety or animal breed within the meaning of Article 48;
  - would jeopardise the existence of a wholly or partially identical name or of a trade mark or the existence of products that have been legally on the market for at least five years preceding the date of publication of the application.

Natural or legal persons with a legitimate interest and established or resident in a Member State other than the one in which the application for registration was submitted cannot lodge an opposition directly with the Commission, but with the Member State of reference within a time limit - which may be set at national level - that allows the Member State to submit an opposition with the Commission within the three-month time limit allowed by the Regulation.

If the opposition is admissible, within five months from the date of publication the Commission invites the opponent and the applicant to engage in “*appropriate consultations for a reasonable period of time not exceeding three months*”, after which any changes to the application must be communicated to the Commission for a new examination.

Based on the documentation submitted and the outcome of any opposition or notice of comments, the Commission decides whether to accept or reject the application for registration.

In the case of an application for registration relating to a geographical indication in a third country, the application - which must also include documentation proving the protection of the GI in the third country concerned - is directly submitted to the European Commission at the EU-level stage without any previous stage at national level. The parties entitled to submit the application are either the group of producers concerned (or the individual producer, under certain conditions) or the competent foreign authority.

### Generic terms

The registration of generic terms as geographical indications is expressly prohibited by Article 28 of the Regulation.

To establish whether or not a term has become generic, two factors must in particular be taken into account: (i) the existing situation in the areas of consumption of the product concerned and (ii) the relevant national or Union legal acts.

### Homonymous geographical indications

The Regulation also broadens protection with respect to homonymous geographical indications by providing that GIs that have been applied for after a wholly or partially homonymous geographical indication had been registered or applied for in the EU, shall not be registered if:

- there is no “*sufficient distinction in practice between the conditions of local and long-established usage and the presentation of the two wholly or partially homonymous indications*” thereby misleading consumers as to the identity and origin of the products;

- mislead consumers into believing that the products covered by the GI concerned come from a different territory, even though this is correct in relation to the geographical area where such products actually originate.

### More power to producer groups

Recognised producer groups will be able to manage, strengthen and develop their geographical indications, in particular through **access to anti-counterfeiting and customs authorities in all Member States**.

In particular, the Regulation allows producer groups to prevent or counteract any measures or business practices that are harmful and/or risky to the image and value of their products, develop tourism services in their production area and prepare sustainability reports describing their sustainable initiatives.

### Online protection and protection of domain names

Based on the fact that, in practice, protection had already long since been extended to *online* sales of counterfeit products without receiving any particular challenge, the Regulation now explicitly applies to **“products sold by means of distance selling”**.

The Commission may also entrust the **EUIPO** to establish and manage a **domain name information and alert system** that, upon submission of an application for a geographical indication, would provide the applicant information on the availability of the GI as a domain name and, upon request, also on the registration of a domain name identical to the geographical indication concerned.

### The protection against evocation

In line with the changes recently introduced by Regulation (EU) 2021/2117<sup>4</sup>, the Regulation stipulates that geographical indications are protected against all of the following unlawful uses:

- i. 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 that geographical indication for any product or any service exploits, weakens, dilutes, or is detrimental to the reputation of, the protected name, including when those products are used as an ingredient;
- ii. any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar, including when those products are used as an ingredient;
- iii. 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 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;
- iv. any other practice liable to mislead consumers as to the true origin of the product.

It should also be noted that, unlike in the past, the concept of evocation of a geographical indication is now expressly defined in the Regulation.

In fact, the preamble to the Regulation states: *“Building on the established case-law of the Court of Justice of the European Union, evocation of a geographical indication may arise, in particular, where a **link with the product designated by the registered geographical indication**, including with reference to a term, sign, or other labelling or packaging device, **is present in the mind of the average European consumer who is reasonably well-informed, observant and circumspect**”*.

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<sup>4</sup> This is the Regulation that recently amended, among others, Regulation (EU) No. 1151/2012 and Regulation (EU) No. 1308/2013

## Processed products and prepacked food

The Regulation also introduces specific protection in relation to the use of PDO and PGI products (except for spirits) as an ingredient of processed products (*i.e.*, those products that are composed of more than one ingredient processed together) and prepacked food<sup>5</sup>.

In particular, **the geographical indication designating a product used as an ingredient of a processed product may only be used in the name, label and advertising material of that product** if:

- i. the processed product does not contain other **products comparable to** the ingredient designated by the geographical indication;
- ii. the ingredient designated by the geographical indication is used **in sufficient quantities to confer an essential characteristic on** the product concerned;
- iii. the percentage of the ingredient designated by the geographical indication in the processed product is indicated on the label.

These rules are actually not entirely new. Until now, they were in fact governed by the recommendations contained in the European Commission's Communication (2010/C - 341/03) on '*Guidelines on the labelling of foodstuffs using protected designation of origin (PDO) or protected geographical indication (PGI) products as ingredients*'. These guidelines, although an important tool to support protection, were nevertheless defined as 'non-binding' by the Commission itself.

Producers of a prepacked food containing a PDO or PGI among the ingredients that intend to use the geographical indication in the name and advertising material of that prepacked food are also required to submit **a prior written notification to the producer group in charge of the protection of the PDO or PGI in which they demonstrate that all the above requirements are met**. The producer group must then, within four months from the notification, confirm receipt of the notification, possibly providing non-binding information on the use of the PDO or PGI concerned. Once confirmation has been received, or in any case after the expiry of the four-month period, producers may start using the protected name in the name of the prepacked food.

With the inclusion of these rules within the Regulation, PDO and PGI products used in processed products will also enjoy more extensive protection as well as giving the Protection Consortia greater control over possible illegal uses on the market.

Finally, the recognised producer groups and the producers of prepacked food may enter into an agreement about "*specific technical and visual aspects of how the geographical indication of the ingredient is presented in the name of the prepacked food in labelling, elsewhere than in the list of ingredients, or in advertising material*".

The Commission is in any case empowered to issue delegated acts to lay down (i) further rules on the use of products comparable to the PDO or PGI as ingredients of a processed product and (ii) criteria for assessing whether a PDO or PGI is capable of conferring an essential characteristic on a processed product.

## Optional quality terms

To facilitate, in the internal market, the communication by producers of the value-adding characteristics or attributes of agricultural products, the Regulation also establishes a protection scheme for so-called 'optional quality terms'.

In particular, these terms must jointly:

- i. relate to a characteristic of one or more product categories or to a farming or processing attribute applicable in specific areas;

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<sup>5</sup> For the purposes of the Regulation, the definition contained in Article 2(2)(e) of Regulation (EU) No. 1169/2011 (on the provision of food information to consumers) is used. 1169/2011 (on the provision of food information to consumers), according to which "prepacked food" is considered to be: *a unit of sale intended to be presented as such to the final consumer and to mass caterers, consisting of a food and the packaging into which it was packed before being offered for sale, wrapped in its entirety or in part in such packaging, but in such a way that the contents cannot be altered without opening or changing the packaging*. However, for the purposes of the new legislation, the definition of "prepacked food" does not include food packaged at the point of sale at the consumer's request or prepackaged for direct sale.

- ii. through their use, add value to the product compared to products of a similar type;
- iii. have a European dimension.

On the other hand, this Regulation does not apply to optional quality terms that describe technical qualities of a product with the purpose of putting into effect compulsory marketing standards and that are not intended to inform consumers about the qualities of the product.

The Commission is empowered to adopt delegated acts supplementing the Regulation and implementing acts aimed at applying the protection regime in question.

Member States may in any case maintain national provisions on indications and optional quality terms that are not governed by the Regulation, provided that they do not conflict with Union law, thus including this Regulation.

Finally, the term “**mountain product**” is expressly regulated by the Regulation as an optional quality term. In particular, this indication may only be adopted in relation to products where:

- both raw materials and feed for farm animals come essentially from mountain areas;
- in the case of processed products, the processing also takes place in mountain areas.

### Sustainability

The Regulation supports the introduction of “sustainable practices” in relation to a geographical indication, *i.e.*, the possible **sustainability commitments of producer groups**, which may even introduce stricter rules than those already prescribed at national or EU level.

These commitments may be **included in the same product specification as the product to be** protected, with the consequence that all producers of a given product will have to comply with these rules to be able to use the PDO or PGI concerned.

Sustainable practice within the meaning of Article 7 of the Regulation is to be understood as meaning **not only practices of an environmental nature, but also those of an economic and social nature**, such as, for example, the improvement of working and employment conditions, support for young people and new producers of products benefiting from a geographical indication, and support for local agricultural production.

The producer group can also prepare a sustainability report to be published by the Commission. The report shall be based on verifiable information and include *(i)* a description of the 'sustainable practices', *(ii)* the impact of the product's production on sustainability and *(iii)* information on how sustainability affects the product.

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