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For the attention of the Secretary General of

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«CDG QUALITY AND PROMOTION»

13 FEBRUARY 2015

AGENDA POINT 8: Discussion on the possibility for further simplification in the area of quality policy

1. INTRODUCTION

Reviewing the scope for further simplification in the area of EU quality policy, including geographical indications (GIs) for agricultural products and foodstuffs, wines, spirit drinks and aromatised wines is a priority for the next Commission.

As of today, EU level rules for the registration and protection of GIs cover four product areas: agricultural products and foodstuffs, wine, spirit drinks and aromatised wines. Rules are laid down in four different Regulations of the Council and the European Parliament¹. The results of the public consultation with respect to establishing EU level

¹ (1) Regulation (EU) 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

(2) Part II, Title II, Chapter I, Section 2 of Council Regulation (EU) No 1308/2013 as concerns wine. Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 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 (OJ L 347, 20.12.2013, p. 671).

(3) Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

(4) Council Regulation (EU) No 251/2014 of 20.3.2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatized wine products, and repealing Council Regulation (EEC) No 1601/91. (OJ L 84, 20.3.2014, p. 14).

rules for non-agricultural GIs have just being presented. In comparison, there is a single EU level Regulation for trade marks, covering all types of products.

2. STAKEHOLDER CONSULTATION

A wide on-line stakeholder consultation (15.10.2008 until 31.12.2008) covering all aspects of the quality policy took place through a Green Paper on agricultural product quality policy². A chapter on geographical indications described the situation and raised 6 open questions. More than 500 contributions were received. The feedback of the Green paper consultation was provided by means of the summary report published mid-March 2009. The annex presents a summary of views of stakeholders on geographical indications.

3. IMPACT ASSESSMENT FINDINGS IN 2009 AND 2010

The scope for simplification as well as advantages and disadvantages of the options were to considerable extent examined in two impact assessments presented in 2009 and 2010.

These two separate impact assessment processes have been carried out for PDO and PGI. The first one³ accompanied the Commission Communication on Quality Policy (adopted in May 2009); and the second one⁴ the Commission proposal for a Regulation on agricultural product quality schemes (adopted in December 2010).

The impact assessment carried out in the run-up to Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs identified considerable ground for reducing complexity and facilitating enforcement by merging the systems for the above-mentioned geographical indications while assuring the specificities of each system.

4. WHAT HAS HAPPENED SINCE 2010?

Some streamlining and simplification of the existing rules for **agricultural products and foodstuffs** was achieved by adopting Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs ("Quality Regulation"). This Regulation contains a series of simplification measures, for example a substantial acceleration of the procedures at the level of the European Commission.

The rules for designations of origin and geographical indications for **wine** were changed in the framework of the 2013 reform of the Common Agricultural Policy and are now set out in Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products ("single CMO Regulation") and in Regulation (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy ("Horizontal Regulation")⁵. No common approach with the Quality Regulation, not even with respect to procedures, has been achieved. A separate delegated act and implementing Regulation with respect to the registration procedure is therefore required.

² http://ec.europa.eu/agriculture/quality/policy/consultation/greenpaper_en.pdf

³ http://ec.europa.eu/agriculture/quality/policy/com2009_234/ia_en.pdf

⁴ http://ec.europa.eu/agriculture/quality/policy/quality-package-2010/ia-gi_en.pdf

⁵ OJ L 347, 20.12.2013, p.549.

The rules for geographical indications for **aromatised wines** have been adapted by Regulation (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products⁶. No harmonisation with either the rules in the Quality Regulation or the single CMO Regulation has been achieved. A separate delegated act and implementing Regulation with respect to the registration procedure are necessary.

With respect to geographical indications for **spirit drinks**, alignment with the Lisbon Treaty of the existing Regulation (EC) No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks remains necessary.

5. QUESTIONS FOR A DEBATE

(1) Stakeholders provided their position in the framework of impact assessment process carried out for the Commission Communication on Quality Policy in 2009 as well as Commission proposal for a Regulation on agricultural product quality schemes in 2010. Could you please explain what – if anything - is new since then? What developments have occurred with regard to GIs? In particular, could you reflect and provide feedback on the following issues (the list is not meant to be exhaustive):

- Changes in market demand; changed environment for the products;
- Changes in consumer preferences;
- Changed environment for consumers / producers / sellers;
- Have challenges for consumers / producers / sellers evolved in the last years? How?

(2) When discussing simplification of EU quality policy, it has repeatedly been raised that specificities / particularities of the sector / product type require differentiated solutions with respect to GI rules. Which existing GI rules do actually have their origin in the specificities / particularities of wine, spirit drink or aromatised wines as compared to the products covered by the Quality Regulation; in other words, which differences in GI rules per sector / product type are justified because it is the product specificity that requires a different treatment? What are these product specificities? For example, is the longer opposition period foreseen for spirit drinks linked to special features of this product? If yes, which one? The focus of the analysis should be on issues linked to the nature of GI as intellectual property rights.

At the meeting of CDG on 13 February 2015, CDG members are invited to make presentations of up to 5 minutes with regard to the above issues (separate presentations for question 1 and 2).

Please inform us by 9 February 2015 whether you would like to make such a presentation, in order to facilitate the planning of the day and ensure sufficient time. Should you like to provide additional written information for or after the meeting, your contributions are welcome as well.

⁶ OJ L 84, 20.3.2014, p.14.

Question 5

Is there a need to clarify or adjust any aspects of the rules laying down the rights of geographical indication users and other users (or potential users) of a name?

About half of the contributions made clear that the current framework laying down the rights of geographical indication users and other users is sufficient. Different issues have been raised by the other half of contributions. Among the aspects for which clarifications have been asked most often, were the need to clarify the rights, duties and tasks of applicant groups (National Authorities did not raise it though); the application of articles 13 and 14 of Regulation (EC) No 510/2006 and the use of geographical indications as ingredients (this issue is treated more extensively under question 8).

What criteria should be used to determine that a name is generic?

Through all the contributions which have been received in answer to this question, the jurisprudence of the European Court of Justice has been highlighted as the most important source to take into account when determining if a name is generic or not. Some suggested working on a case by case basis on the basis of this jurisprudence of the European Court of Justice (ECJ) and the current criteria included in Regulation (EC) No 510/2006.

In addition several respondents highlighted one or more specific criteria, like: situation in the country of origin; perception of the consumer; lack of a link with the geographical area; existence of a standard in the Codex Alimentarius; duration of the use of a name etc. There were mixed feelings on establishing (or not) a list of generic names. In total more than 20 different criteria have been proposed.

Are any changes needed in the geographical indications scheme in respect of: – the extent of protection?

Whereas a majority of processing organisations, general public and academic organisations expressed against any changes with regard to the extent of protection, a majority of farming organisations, regional authorities and quality organisations (category 'other') were in favour. As for national authorities opinions were equally divided.

It was requested by several respondents to extend the TRIPS (Trade-Related aspects of Intellectual Property Rights) protection of wines and spirits to all other products and to create an international register for geographical Indications (GI's). At the same time it was asked to improve the protection outside the EU through bilateral agreements with third countries (this issue is treated also under question 7).

– the enforcement of the protection?

Within all categories it was estimated there is a need for a better administrative enforcement of protection within and between Member States. To a lesser degree, some indicated the enforcement of protection in third countries is a problem.

A majority of respondents emphasized that this should be done by clarifying and harmonizing at EU level the responsibilities, investigation procedures and sanctions of national control bodies to guarantee an equal application in all Member States.

– the agricultural products and foodstuffs covered?

In contrast to the processing sector where a clear majority expressed against any extension, a majority of the general public, national and regional authorities, academic organisations/think tanks and quality organisations expressed in favour for extension of the scope of products. About as many farming organisations were in favour and against an extension.

Suggestions for new products to be covered included processed products, distillates for human consumption not made from wine, natural products (e.g. wild berries), ice-cream based on milk and water, artisan products, textile, cigars, silk or wood. However, some organisations explicitly expressed against including non-agricultural products.

Should the use of alternative instruments, such as trademark protection, be more actively encouraged?

A majority of respondents stated that geographical indications and trademarks are not alternatives but two systems distinct in nature that should co-exist.

Some stated both systems could be complementary. Several farming organisations indicated that collective trademarks could be interesting to use in the case of international trade in certain 3rd countries. Collective trademarks could be an alternative to geographical indications for certain typical local productions linked to an area having a limited economical impact. Few processing organisations, within the dairy sector, asked to encourage the use of collective trademarks not linked to protected denominations of origin/protected geographical indications (PDOs/PGIs).

Question 6

Should additional criteria be introduced to restrict applications for geographical indications? In particular, should the criteria for protected geographical indications, as distinct from protected designations of origin, be made stricter to emphasise the link between the product and the geographical area?

The majority of respondents were against introducing additional stricter criteria for geographical indications. It is not the high number of names which weaken the system but the lack of communication. A vast majority of respondents asked for a better communication on current schemes and European symbol before adding new criteria. More flexible criteria regarding the origin of raw materials were asked mainly by French contributions. The origin of the raw materials should be indicated if there would be a risk of misleading the consumers (see also question number 9 below).

Reinforcement of control by the Member States and a harmonised application among them was part of the raised issues as well as the need for an Agency to help the registration and management, harmonisation of implementation of legislation and controls. Besides, there was a proposal to merge the PDO and PGI schemes with a more flexible approach to origin and use of raw materials from outside the area.

Should specific sustainability and other criteria be included as part of the specification, whether or not they are intrinsically linked to origin? If so, what would be the benefits and drawbacks? If not, please explain.

A large majority of respondents from different sectors, with the exception of National authorities and individual consumers/farmers, were opposed to specific sustainability and other criteria. Among the number of those who expressed against such criteria, main

disadvantage mentioned were the risk of consumers confusion and the risk of a reduction of benefits. Some who objected thought that this criterion could be made voluntary. Respondents in favour underlined as main advantages better consumer information or the need to introduce environmental criteria. They also suggested that the criteria be voluntary.

Question 7

What kind of difficulties do users of geographical indications face when trying to ensure protection in countries outside the EU?

There was a general concern of the lack of protection of GI in 3rd countries, mainly expressed by farming organisations and some Member states, but also by consumers (France).

Stakeholders identified problems they face when exporting EU products bearing geographical names protected as PDO and PGI. Third country organisation mentions that international trademark and fair trading regimes provide enough protection for brands. The first set of problems concerned the protection provided by TRIPS. Stakeholders underlined the difficulties to enforce the protection provided by TRIPS, mainly because it was complex to prove the GI "status". Infringements of GI rights were also difficult to prove. Major problem was also the low level of protection provided by TRIPS (especially for products other than wine and spirits), and that the protection was reduced by the scope exceptions enshrined in Article 24.

The second set of problems was the relation to trademarks, when a previous trademark had already registered the name.

The third set of problems referred to the generic use of the protected name or its translation.

Problems related to counterfeiting were often mentioned as well as the fact that the EU did not sufficiently enforce bilateral agreements.

What should the EU do to protect geographical indications in the most effective way in third countries?

A majority of respondents supported the negotiation of bilateral and multilateral agreements in the framework of the World Trade Organisation (WTO) - a majority mentioned the TRIPS Council. Some stakeholders did ask for more proactive and strong positions in both arenas, bilateral and multilateral. As regard multilateral negotiations, a majority of stakeholders supported the creation of a legally binding register for GI's, for wine and spirits but also open to all goods. It was also mentioned the inclusion of GI's in the scope of Anti-Counterfeiting Trade agreement (ACTA). In bilateral agreements, although GI provisions should be included in every agreement, the idea to select strategic countries was raised by stakeholders in several responses.

Question 8

Have any difficulties arisen from advertising of PGI/PDO ingredients used in processed products/prepared foods?

While negative answers (i.e. no difficulties arisen) were expressed explicitly, in a significant number of answers respondents simply declared themselves in favour of new rules on the advertising of PDO/PGI as ingredients without explicitly indicating whether actual difficulties had already arisen. Half of national authorities answers declared explicitly that no difficulty have arisen so far.

A majority of respondents was in favour of laying down rules on the use/advertising of PDO/PGI as ingredients so as to prevent misleading consumers.

Question 9

What are the advantages and disadvantages of identifying the origin of raw materials in cases where they come from somewhere else than the location of the geographical indication?

All sectors, besides the processing organisations, were in a large majority favourable to the identification of the origin of raw materials, mentioning as the main advantage better consumer information and awareness. Many mentioned that it would be justified and/or positive in the case of PGI. Some expressed that this information should stay rather optional.

The processing organisations were in a large majority against identifying the origin of raw material, mainly mentioning as a disadvantage the confusion of consumers. Some expressed the fact that it would not add anything to quality, or that it would be irrelevant for PGI.

Among the other sectors, a minority was against, mentioning as the main disadvantage the risk of confusion of consumers (underlining it in the case of PGI) and higher costs.

Question 10

Should the three EU systems for protection of geographical indications be simplified and harmonised? If so, to what extent?

Alternatively, should they continue to develop as separate registration instruments?

The majority was in favour of the harmonisation of the 3 systems: agricultural products, wine and spirits, but keeping their specificity. The processing and trade organisations majority supported the current situation with 3 harmonised but separate systems.

The merging of the 3 systems, with a single register, was supported by third countries' respondents and some of the farmers' organisations.

The consumers were generally in favour of simplification and more coherence.