



oriGIn comments on the draft spirit drinks Regulation

oriGIn is the global alliance of Geographical Indications, which counts among its members 500 associations of producers from 40 countries, including some of the most famous European Protected Designations of Origin (PDO), Protected Geographical Indications (PGI) and Geographical Indications (GIs). oriGIn advocates for a more effective legal protection of Geographical Indications at the national, regional and international level and promotes them as a sustainable development tool.

oriGIn analysed the draft spirit drinks Regulation (the draft regulation) which will replace Regulation EC 110/2008 (the current regulation) and made the following comments.

Recital 17

As we believe that customs authorities should be enabled to take action against fake GIs transiting the EU, in line with equivalent provisions that now exist in the EU to protect trade marks (EU trade mark regulation - Regulation 207/2009 as amended by Regulation 2015/2424), we propose an addition to Recital 17 (see also the recommendation to amend Article 18).

Recommendation: Add the words “Furthermore, the protection of geographical indications should be extended to goods brought, in the course of trade, into the Union without being released for free circulation, where such goods, including packaging, come from third countries.” at the end of the recital.

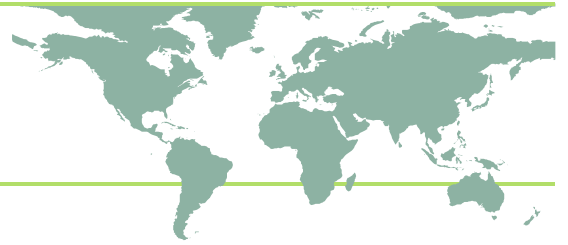
Recital 22

This sets out the argument that the Commission should have delegated power to amend the regulation to take account of a wide range of matters.

From a general perspective, we have concerns that this would give the Commission scope to propose significant changes through delegated legislation without full consideration and scrutiny from Council and European Parliament.

More specifically, when delegated legislation is considered on those parts of the draft regulation covered by this recital, traditional practice – which underpins all geographical indications (GIs) – should be taken into account. This would be consistent with the importance of traditional practice set out in recitals 3, 6 and 7.





Recommendation: Add the words “and taking into account the importance of traditional practice” after the words “geographical indications” and before the words “the power to adopt acts”.

Delegated powers – Article 5(1) – technical definitions and category requirements

This would allow the Commission to adopt delegated acts to amend technical definitions and category requirements to meet demonstrated needs resulting from evolving consumer demands, technological progress, developments in international standards or needs for product innovation. We are concerned that there is no recognition of the importance of traditional practice when considering delegated acts on these important issues, which is inconsistent with the reference to traditional practice in the recitals.

Recommendation: Add the words “whilst taking into account the importance of traditional practice” at the end of the paragraph after “product innovation”.

General rules – Article 8(4)(b)

Article 17(h) of the current regulation permits any supplement to the geographical indication and/or for any specific labelling rule to be set out in the Technical File. Some EU sprits benefited from that permission to list a number of possible supplements to the GI.

By contrast Article 19(h) of the draft regulation omits any reference to “supplements to the GI”. Whilst Article 8.4(b) of the draft states that GIs can be supplemented “by terms indicated in the relevant product specification”, this could be interpreted as restricting supplements to the GI to specific terms indicated in the product specification rather than any supplements to the geographical indication permitted by the product specification. We want to avoid any risk of a restrictive interpretation which could cause difficulties.

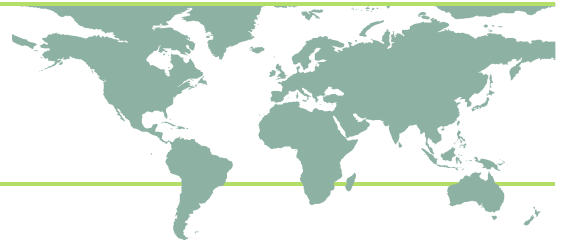
Recommendation: Delete “by terms indicated in the relevant product specification” and replace with “by any terms permitted by the relevant product specification.”

Presentation and labelling of mixtures – Article 10

Article 11 of the current regulation states that the “sales denomination (of a mixture) shall be shown clearly and visibly in a prominent position on the label and shall not be replaced or altered.”

Whilst the reference to “shall not be replaced or altered” is now included as a general requirement in article 8(4) of the draft regulation for all sales denominations, the requirement that the sales denomination of a mixture is shown clearly and visibly in a prominent position is missing. As the





sales denomination is important information for the consumer, we believe that requirement should be re-instated.

Recommendation: Add, following the first sentence of Article 10(1), the sentence “This sales denomination shall be shown clearly and visibly in a prominent position on the label.”

Indication of origin – Article 12(1)

The current regulation defines “place of manufacture” as “the place or region where the stage in the production process of the finished product which conferred on the spirit drink its character and essential qualities took place.” That is the common sense approach, reflects the approach taken by judicial authorities for labelling purposes in many jurisdictions, and has the merit of being easily understood by consumers and the trade.

However, the draft regulation introduces the rules on origin set out in Article 60 of Regulation 952/2013 (which is the regulation which determines origin for tariff classification purposes), harmonising the rules of origin to those which apply to food in Regulation 1151/2012. Unfortunately the application of Article 60(2) is less clear in its effect for spirits than the definition of place of manufacture and could result in a wide range of problems. Spirit drinks (not only mixtures) can undergo operations that involve more than one country. However, depending on the specific case, it is not always clear if these operations confer a change in origin under the terms of Article 60 of Regulation 952/2013. In addition, further “chapter residual” rules for spirits are set out in delegated legislation (Annex 22/01 of Delegated Regulation 2015/2446), which apply under article 60, to any spirit drink which contains spirit from two or more sources.

Recommendation: Replace the wording in Article 12(1) with the definition of “place of manufacture” in the current regulation as follows: “Where the origin of a spirit drink is indicated, it shall correspond to the place or region where the stage in the production process of the finished product which conferred on the spirit drink its character and essential qualities took place.”

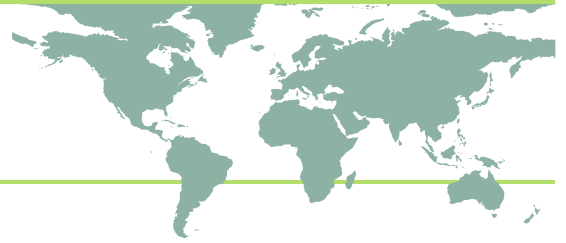
Language used for the names of spirit drinks – Article 13

We are concerned by the omission of Article 14(4) of the current regulation which permits the use of other languages for exported GI spirit drinks. Whilst we agree that the GI name must be stated on the product, some markets may require an additional translation of the GI.

Recommendation: Add a new sub-paragraph:

“Without prejudice to paragraph 1, in the case of spirit drinks produced in the Union and intended for export, the particulars provided for in this Regulation may be supplemented in a language easily understood by the final consumer.”





Protection of geographical indications – Article 18

The reference to “protected” geographical indications here (and elsewhere in the draft) appears superfluous but is no doubt intended to harmonise with the reference to Protected Geographical Indications (PGIs) in the food Regulation 1151/2012.

Recommendation: Delete reference to “protected” in article 18 and where it appears elsewhere in the same context.

Protection of geographical indications – Article 18(2)(c)

The wording of this subparagraph appears to be more restrictive than its equivalent under Article 16(c) of the current regulation because Article 16(c) refers to the description, presentation or labelling of the product which would include any sales promotion associated with the product. In the case of Article 18(2)(c) of the draft regulation there is no reference to the presentation and labelling of the product as defined in the draft regulation, which would cover sales promotion. Instead, there is a reference to “advertising material or documents”. Advertising is mentioned separately to sales promotion in the definition of “presentation” in article 2(8) which implies that they should be regarded as separate. To put the matter beyond doubt, the subparagraph should be amended to include the presentation and labelling of the product.

Recommendation: Delete the words “on the inner or outer packaging, advertising material or documents relating to the product and the packing of the product in a container” and replace with the words “on the presentation or labelling of the product”.

Fake Geographical Indications in transit through the EU – Article 18 (new)

Last year the amended EU trade mark regulation (Regulation 207/2009 as amended by Regulation 2015/2424) came into force. Article 9(4) of the amended regulation entitles trade mark owners to take action to stop third parties from taking transit goods through the EU bearing an unauthorised trade mark. No such right exists for geographical indications. Customs are only able to intercept such fake GIs in transit through the EU if there are sufficient grounds for suspecting that the goods will be diverted into the EU market. There is no reason why the measure to protect trade marks should not also be made available to geographical indications. EU customs authorities should not be impotent to act if fake GIs transit the EU irrespective of any suspicion that the goods will be diverted into the EU. We therefore propose an amendment to the draft Regulation (which could adapt the language used in the trade mark regulation) by introducing a new recital and amending Article 18.

Recommendation: Add a new recital, adapting the wording used in the amended trade mark regulation and introduce a new subparagraph after article 18(2) as follows: “The protection for





geographical indications referred to in paragraph 2 shall be extended to goods brought, in the course of trade, into the Union without being released for free circulation, where such goods, including packaging, come from third countries.”

Transitional national protection – Article 22

Reference to transitional national protection reflects similar provisions in Article 9 of Regulation 1151/2012 but is not appropriate for spirit drinks and is inconsistent with Article 42 of the draft regulation which specifically allows for member states to lay down rules on production, presentation and labelling stricter than those set out in the category definitions in Annex II.

In summary, there is no need for a provision for transitional national protection. A spirit drink GI can be capable of protection in national law separately from its protection at EU level and it is for the Member State to decide if that protection should be transitional or permanent.

Recommendation: Delete Article 22.

Register of geographical indications of spirit drinks – Article 30

The last paragraph of the article refers to GIs produced in third countries that are protected in the EU pursuant to an international agreement and indicates that these names could be entered into the GI register without a formal GI application under the Regulation. We understand this is because the Commission wants to have flexibility to place GIs on the register to reflect reciprocal arrangements with third countries. In practice, it would create a two tier system for GIs: those GIs which are required to go through a rigorous application procedure and those which do not. Not only does this have the potential to create fundamentally more favourable treatment for non-EU GIs, it would result in considerable inconsistency in the application of the rules. In these circumstances, the Commission should be required to carefully consider the position before any such third country GIs are included in the EU Register.

Recommendation: Add the following words to the end of the article: “only after the Commission has adopted an implementing act to that effect.”

Specific grounds for refusal of protection – Article 32(3)

The term “production or preparation steps” is nevertheless unclear in a spirit drinks context and Article 32(3) should be deleted.

Recommendation: Delete Article 32(3)





Relation between trademarks and geographical indications – Article 33(1)

Article 33 inherits the equivalent rule in Article 23 of the current regulation. There are issues with the interpretation of Article 23 and those issues of interpretation also therefore apply to Article 33.

The issue relates to the contradiction between the first part of subparagraph 1, mainly the registration of a trademark which contains or consists of a geographical indication listed on the register and the reference to “any of the situations referred to in Article 18(2)”. The situations referred to in Article 18 (2) include indirect means to suggest the GI including use which exploits the reputation of the GI and evocation of the GI and any other false or misleading indication as to the origin of the product. These situations do not require misuse of the GI name or part of the GI name itself, so reference to article 18(2) is not consistent with the requirement of the first part of article 33 i.e. that the trade mark must contain or consist of the GI. Furthermore, the equivalent protection for food GIs in Regulation 1151/2012 does not contain this inherent inconsistency.

Recommendation: Amend the subparagraph to “The registration of a trademark shall be refused or invalidated if its use would lead to any of the situations referred to in Article 18(2).”

Delegated powers – Article 38(1)

This provision suggests the Commission would have the power to make rules in relation to production in the relevant geographical area and is not only inconsistent with national competence to set the rules for that member state’s GIs (Article 42) but opens up the possibility that the Commission could amend the product specification itself. This also appears to apply whether the GI is from a member state or a third country.

Recommendation: Delete Article 38(1)

Delegated powers – Article 38(2)

This provision allows for the Commission to provide for conditions under which product specifications may include information on packaging or any specific labelling rules. This is not compatible with Article 42.

Recommendation: Delete Article 38(2)

Transitional measures – Article 46

Whilst this article is welcome, there is no link provided anywhere in the draft regulation to treat the technical file for existing GIs as the equivalent of the product specification as defined in the draft regulation. To provide that link and to avoid any confusion, reference should be made to technical



files to ensure they are recognized for established GIs and treated as product specifications for the purposes of this Regulation.

Recommendation: Amend draft regulation where required to link the technical file for established GIs under the current regulation with the product specification under the draft regulation. We believe the most logical place to do this would be to add the following after the first paragraph of Article 46(3).

“Reference to Product Specifications as defined by Article 2.1(7) shall also be taken to include the Technical Files of spirit drinks protected under Regulation (EC) No 110/2008 where appropriate and, in particular, with respect to Articles 18, 28, 29, 35, 38, 39 and this article”.

Additional elements

It should be clarified that the technical files of the Geographical Indications – contained Annex III of the current regulation – must be recognized, protected and registered in the register provided by the draft regulation and the Commission should not impose any cancellation.

The requirement to indicate the period of aging in the accompanying documents (e-AD) should be provided by the draft regulation. In this respect, while in some countries there are extremely strict fiscal controls on aging, in other countries such controls do not offer the same guarantees and, in some cases, are completely absent by causing strong imbalances in the EU market. Likewise, another mandatory requirement should be to indicate in the e-AD accompanying electronic documents the indication of the product’s sale denomination as well as its origin. This because the compulsory indication of the combined nomenclature code is often too generic. For example, brandy, wine spirits and marc spirits are indicated by the same combined nomenclature code. This reduces the possibility of controls and traceability.