

Green Deal: New regulation of geographical indications in the EU Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wines, spirits and agricultural products¹, traditional specialities, guaranteed and optional quality terms for agricultural products

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The most important facts in the brief:

- The new regulation was published on 23 April 2024 and came into force 20 days later on 13 May 2024. It is applicable as of today.²
- As of 12 May 2024, the previous Regulation (EU) No. 1151/2012 on quality schemes for agricultural products and foodstuffs has been repealed and replaced by Regulation (EU) 2024/1143. However, the terminology introduced for "protected designation of origin" ("PDO"), "protected geographical indication" ("PGI") and "geographical indication" as a generic term on the one hand, and for spirits on the other, remains unchanged.
- Previous provisions relating to wine (Regulation (EU) No. 1308/2013 - Common Market Organisation for Agricultural Products) and spirits (Regulation (EU) 2019/787), as well as designations of origin and geographical indications, (Regulation (EU) 2019/1753) are amended.

Objectives of the regulation: sustainability, strengthening producers, legal certainty

The aim of the regulation is to establish a standardised and conclusive system of geographical indications that protects the names of wines, spirits and agricultural products that have properties, characteristics or a reputation associated with the respective place of production. This is intended to strengthen producers' ability to operate and compete, along with legal certainty and the concept of sustainability.

¹ In addition to foodstuffs, "agricultural products" also includes fishery and aquaculture products listed in Chapters 1 to 23 of the Combined Nomenclature in Part II of Annex I to Regulation (EEC) No 2658/87, as well as the agricultural products listed under the headings of the Combined Nomenclature in Annex I to this Regulation, with the exception of wines and spirits.

² With the exception of individual provisions in the national phase of the registration procedure, control and certification of compliance with the product specification, for which a transitional period until 1 January 2025 applies.

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1 The main innovations

1.1 More visibility for producers

If agricultural products are labelled with a geographical indication, the name of the producer or economic operator³ must appear on the label in the same field of vision as the geographical indication.

In the case of spirits with a geographical indication, the name of the producer must always appear in the same field of vision on the label as the geographical indication.

1.2 Producer associations and recognised producer associations

The Regulation distinguishes between "producer associations", whose task it is, for example, to draw up product specifications and submit applications for the registration of geographical indications and "recognised producer associations".

"Producer associations" and "recognised producer associations" differ in that, if a recognised producer association exists for a product, this association alone is entitled to carry out various tasks that would otherwise be the responsibility of all producer associations, in particular those tasks on behalf of all producers who manufacture the product with the geographical indication in question. In this case, individual producers may only take measures to protect their interests.

In order to be recognised as a producer association, the following conditions must be met:

- Associations must have a specific legal form, and
- either a minimum proportion of more than 50% of the producers of the product must be members of the association, or
- a minimum proportion of producers of the product must be members and must produce a minimum quantity or value of more than 50% of the marketable production.

Member States may lay down additional criteria in this respect. Furthermore, Member States may decide that producer groups that were recognised under national law before 13 May 2024 are considered recognised producer groups within the meaning of the Regulation.

1.3 Sustainability as an optional obligation for all producers

A producer group or a recognised producer group, should there be one, may establish sustainable practices to be followed in the production of a product with a geographical indication. Those practices shall aim to apply higher sustainability standards in terms of environmental, social or economic sustainability, or animal welfare, than those laid down in Union or national law. If a producer organisation or a recognised producer organisation decides that

³ This is the person responsible for the stage of production at which the product covered by the geographical indication is obtained, or the person responsible for carrying out a substantial part of the processing of that product.

certain sustainable practices are mandatory for all producers of the product in question, these practices must be included in the product specification, in accordance with the registration or amendment procedure.

1.4 Online protection of geographical indications

Domains: The domain registries established in the EU for national top-level domains (nic.at, denic.de etc.) must ensure that registered geographical indications are recognised in alternative dispute resolution procedures for domain names, as a right that can be asserted in these procedures.

As far as .at domains are concerned, this means the following: Until now, it was already possible for anyone who made a credible legal claim regarding an .at domain to apply to the domain registry nic.at for a so-called wait status to be imposed for this domain, during which time the domain holder could not transfer the domain. With the applicability of the regulation, the infringement of a geographical indication can then also be claimed - certified accordingly - in order to obtain a wait status and thus block the transfer of a claimed domain. For example, a domain consisting of the terms "asparagus" and "Marchfeld" could be registered by producers who are not authorised to use the protected geographical indication "Marchfeldspargel", for example because they do not produce their asparagus in Marchfeld. Another example would be the producer of a product from the area to which the geographical indication in question relates, but whose products are not produced using the sustainable practices that may be declared mandatory in the product specification for all producers of the product in question.

Online trade: Any information related to the advertising, promotion and sale of products that is accessible to persons established in the Union, and that infringes the protection of geographical indications, is considered illegal content within the meaning of Article 3(h) of the Digital Services Act (Regulation (EU) 2022/2065). This has a particular impact on the obligations and liability of hosting service providers and online platform operators: The aforementioned entities will also have to take action, given this regulation, as a result of content that infringes geographical indications. This means that any person or organisation will be able to report certain content to operators of online platforms and hosting service providers in general if there is a justified assumption that, for example, an advertisement on the platform infringes a protected geographical indication.

1.5 Geographical indications used to designate the ingredient of a processed product

The Regulation also specifies the conditions under which a geographical indication may be used to designate a product used as an ingredient in a processed product in the name, labelling or advertising material of that processed product for agricultural products and wine, but not for spirits:

- The processed product may not contain another product that is comparable to the ingredient designated by the geographical indication,
- the ingredient designated by the geographical indication is used in sufficient quantities to confer an essential characteristic on the processed product concerned, and
- the percentage of the ingredient designated by the geographical indication in the processed product is indicated on the labelling.

The purpose of these conditions is to ensure that such use is in accordance with fair commercial practices and does not weaken, dilute or harm the reputation of the product bearing the geographical indication used as an ingredient.

Also important is the following additional obligation imposed on producers of pre-packaged food containing such an ingredient: Said producers must give prior written notice to the recognised producer association for the geographical indication in question, if one exists. The producer of pre-packaged food can only start using the geographical indication in the name of the pre-packaged food after receiving the acknowledgement of receipt (deadline: four months) or at the latest following the expiry of this deadline. This is intended to strengthen the role of recognised producer associations. An example of this would be pre-packaged doughnuts with a filling of "Wachauer Marille", which the manufacturer would like to label as "Wachauer Marillen-Krapfen".

2 Conclusion

The Regulation brings welcome clarifications and thus legal certainty in the domain and online area. It does the same for processed products, significantly strengthens the legal position of producers of products protected by geographical indications and introduces the concept of sustainability into the law of geographical indications. The fact that the latter aspect was only included on an optional basis may seem regrettable, but is ultimately due to the competitiveness of European producers; excessive sustainability requirements would therefore be neither enforceable nor sensible.

About Wolf Theiss

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