



EUROPEAN COMMISSION
 DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT
 Directorate F – Outreach, Research & Geographical Indications
 The Director

Brussels
 AGRI.F.3/

Subject : Questions received by Germany ahead of the mini-conference meeting on GIs in Bonn on 17/09/2024 – Written reply as announced

Dear Mesdames,

Thank you for your email messages of 26 July 2024 and 26 August 2024, raising a number of questions of interpretation of Regulation (EU) 2024/1143 ⁽¹⁾ ahead of the conference on geographical indications organized between Unit AGRI F3 and the German competent authorities on 17 September 2024 in Bonn.

As it was announced at the meeting, we share with you an official written reply to these questions.

1. Provisions on the power to apply concerning the democratic structure of the producer group

The provisions on the right to apply have been tightened: Under Article 32(1)(c) of Regulation (EU) 2024/1143, a producer group must be organised democratically. In the case of new applications, we would have to take this into account. Are there any ideas about the criteria on which the check should be carried out? Not all those applying for a producer group are legal entities.

Reply: The Commission will not propose any specific criteria to the Member States for verification that a producer group complies with that provision. Member States have a margin of discretion in verifying the compliance. Such a verification must, however take place before the date of registration of the geographical indication as

⁽¹⁾ 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.

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applicant groups need to meet that criterion by that date (Article 32(1), second subparagraph).

2. Requirements for an applicant producer group in accordance with Article 9 of Regulation (EU) 2024/1143 where conditions for a producer group are not yet fulfilled

What are the requirements for the required legal form (at least an association under a single name/address)?

Reply: There is no specific legal form required for an applicant producer group. Any legal form can be accepted.

To what extent can other interested parties “assist” (would be part of an applicant producer group)?

Reply: Article 9 of Regulation (EU) 2024/1143 indicates that “public bodies and other interested parties may assist in the preparation of the application and in the related procedure”, i.e. government agencies, other public bodies or other interested third parties can help the producer group to prepare the application but without being part of the producer group. Furthermore, public bodies may be involved in the creation or functioning of a producer group in the ways identified in Articles 32(5) and 32(6). Under Article 9(2), an authority may be designated as ‘the producer group’ (just for spirit drinks). In addition, Article 32(2) provides that “Member States may decide that operators and representatives of economic activities linked to one of the stages of the supply chain of products designated by a geographical indication and stakeholders referred to in Article 157 of Regulation (EU) No 1308/2013 may be members of a producer group, if they have a specific interest in the products covered by the producer group”.

3. Financing of producer groups

To what extent can Member States delegate tasks to producer groups, which could also be financed by non-members?

Reply: Article 32(4) provides a non-exhaustive list of tasks that may be exercised by a producer group. A producer group may exercise additional tasks. The Regulation does not provide for the possibility of delegating state tasks to the producer group. It also does not explicitly exclude this possibility. However, any such delegation of state tasks should be in line with the general principles of law, with EU law and national law, and specifically with the provisions of this Regulation, as well as with competition law. Any provision of external financing for the execution of such tasks should be compliant with state aid and fair competition rules as well as with the provisions of this Regulation.

4. Internal control systems (ICS)

In contrast to the Southern European countries, Germany has in the producer groups few self-monitoring systems for products; this is often the responsibility of the producers themselves. Could such ICSs be made mandatory by Member States, for example as a condition for the recognition of a producer group, and could a producer group be granted the right to include non-members in such a system?

Reply: Control of the GI should not be a matter of the authorities alone. The control of a GI is a chain that involves many stakeholders: the different competent authorities (fiscal authority, prevention of frauds authority...), the operators through their own controls, the producer groups through their ability to implement internal controls and to assess the product quality, the control bodies when control tasks are delegated to them and the accredited laboratories.

In this context, ensuring traceability through effective documentary checks is crucial, as well as carrying out laboratory and on-the-field checks, to trace products intended to be certified as a GI.

It is at the same time very important to ensure an effective system of treatment of non-compliances, if detected, to protect the reputation of GIs, their producers and the consumers' confidence for the GI system.

In line with Article 32(3), "*Member States may provide for additional rules, in particular as regards the organisation, statutes, functioning and the nature of membership of, and financial contributions to, producer groups*". In the light of the above, Member States can introduce new rules concerning the setting up of self-monitoring systems by producer groups.

In the case of recognized producer groups, Article 33(2) says that Member States may provide for additional criteria for the recognition of a producer group, which can include the fact of having an ICS system.

Under Article 39(2), producers are responsible for own controls while, under Article 39(3), control authorities and delegated bodies (or natural persons) are responsible for official controls.

The producer groups may perform internal controls on their members (internal checks according to an approved single control plan for each GI, to verify if the producers comply with the GI product specifications). That would not replace the producers' responsibility to carry out their own controls in the first place (e.g. to keep registers of raw materials for traceability purposes, etc.), but it would be a joint organisation of the quality control. The procedures/methodology of implementation of the own controls may be developed by the producer groups and reflected in the control plans, which must be implemented by all the members. This would be in line with Article 32(4), point (a), which provides that producer groups may support their members with their own control system to verify and ensure compliance with the product specification concerned.

If the producer group decides to implement a system of internal control of its members, in principle non-members could be covered only on a voluntary basis.

5. Requirements for the tasks to be performed by producer groups

Is any contribution, even small, to any of the tasks set out in Article 32(4) of Regulation (EU) 2024/1143 sufficient to fulfil the condition of point (a) of the first subparagraph of Article 32(1) of Regulation (EU) 2024/1143?

Reply: The task must be 'performed'. A small contribution does not seem sufficient.

6. Individual producers

Article 9(3) of Regulation (EU) 2024/1143 lays down the conditions for the recognition of an individual producer as an applicant producer group. If the conditions are met, the text gives the Member State a discretionary decision on the recognition of the individual producer as an applicant producer group.

In the TSG sector, however, under the second sentence of Article 56(1) of Regulation (EU) 2024/1143, an individual producer is to be regarded by law as an applicant producer group.

In our opinion, there is no reason to treat the variants described differently. The individual producer referred to in Article 9(3) of Regulation (EU) 2024/1143 must only fulfil the conditions set out in points (a) to (c) of Article 9(3) of Regulation (EU) 2024/1143 before it can be recognised as such. This already significantly restricts the group of addressees. By fulfilling the conditions, such an addressee has an increased interest in protection, which would have to be taken into account in a discretionary decision. In the absence of any recognisable interests to the contrary, a positive decision would have to be taken if the discretion of the competent authority is even reduced to zero.

In this respect, the following two questions are: Would not have Article 9(3) to be bound by the discretion too. Is this a clerical error, or if not, what relevant cases does the Commission intend to cover with the rule?

Reply: There is no difference in this respect in the provisions for GIs and TSGs. Article 9(3) reads: “*For the purposes of this Title, a single producer may be deemed to be an applicant producer group, where it is shown that all of the following conditions are fulfilled: ...*”

The use of the word “may” in this provision is not intended to give a discretion to the Member States to reject an applicant that fulfils all the required conditions. It is to state that a Member State is only *allowed* to consider a single producer as an applicant producer group if all those conditions are fulfilled and in no other case. However, we agree that the way in which this is worded could have been better.

7. The sustainability aspect has been newly introduced into the Regulation (Article 7 of Regulation (EU) 2024/1143, recital 24)

To what extent can the eligibility of a PGI be based on a sustainable practice? Unsustainably produced products must also be able to continue to be protected.

Reply: The eligibility for protection of a product as a GI does not depend on the inclusion of sustainable practices in the product specification. In line with Article 7(1), “a producer group, or a recognised producer group where such a group exists, may agree on sustainable practices to be adhered to in the production of the product designated by a geographical indication...”. There is no obligation to include sustainable practices; they are voluntary.

8. EUIPO

The Regulation provides that the Commission shall establish and maintain a publicly accessible Union register of geographical indications consisting of three parts containing geographical indications for wine, spirit drinks and agricultural products (see Articles 93(1) and 22(1) of Regulation (EU) 2024/1143). Pursuant to Article 22(2)

of Regulation (EU) 2024/1143, EUIPO keeps this Union register and keeps it up to date. Is eAmbrosia redesigned for this purpose? Is GView retained?

Reply: The new role entrusted to EUIPO on the GI register in Article 22 of Regulation (EU) 2024/1143 is currently being explored between DG AGRI and EUIPO IT development teams. There is no final decision yet how it will be implemented. For the time being, until any further announcement, eAmbrosia remains the GI register. In addition, whatever the form the future register may take, the data for the register will be provided by the Commission.

The eAmbrosia portal between the Commission and Member States for processing applications will remain, but it cannot be excluded that some changes will take place.

GView, developed and maintained by EUIPO, will be kept as well, as it is not a legally binding database, but also contains additional information and details (such as maps, pictures etc.).

9. Data collection

Information on names protected in international agreements will also be included in the Union register(s) (see recital 31 of Regulation (EU) 2024/1143; Recital 34 of Regulation (EU) 2023/2411)?

Reply: The information on names protected via bilateral agreements and via the Geneva Act will continue to be found in GView. Only in specific cases, the names may be entered in the Union Register (Article 22(4) of Regulation (EU) 2024/1143).

10. CIGI Union Register:

Will there in future be a separate Union register for CIGIs (cf. Article 37 of Regulation (EU) 2023/2411) in addition to the Union register for AGRI-GIs? Or will CIGI be included in a revamped eAmbrosia?

Reply: EUIPO is developing a register for CIGIs. The AGRI GI and CIGI registers will be distinct registers. However, it is not yet clear whether their online presentation will be formally distinct or integrated in a single platform. The main objective should be to present the information in an easy and clear way to all those who consult the registers, but a definite decision has not been taken yet.

11. Technical file ('Product Specification') for Fränkisches Kirschwasser:

In general, and for the registered geographical indication 'Fränkisches Zwetschgenwasser' (specifically 'Fränkisches Kirschwasser'), is it possible to change obvious mistakes in the product specifications without any formal standard/or even Union amendment?

Reply: In line with Article 24(2) of Regulation (EU) 2024/1143, "...Amendments to a product specification shall be classified into two categories: (a) Union amendments, requiring an opposition procedure at Union level; and (b) standard amendments to be dealt with at Member State or third country level." Union amendments have to follow Commission scrutiny procedure, standard amendments can be with or without changes to the Single Document and are the ones that can be dealt with directly by the Member State. There is no other more informal way to make changes to a product specification.

12. New labelling rules (name of the producer):

We would like to draw your attention to the questions of the letter to the European Commission of 2 July 2024.

Reply: The replies to the questions mentioned above were sent to Germany on 23 September 2024 (ARES(2024)6707350).

13. Possible amendment of Article 37(5) of Regulation (EU) 2024/1143:

Could a change be initiated during the two-year transitional period, placing spirit drinks on an equal footing with agricultural products? The current special treatment of spirit drinks is impracticable for some spirit drinks with a geographical indication and effectively excludes them from the use of the protected designation.

Reply: At present, the Commission does not envisage to propose an amendment to Article 37(5) of Regulation (EU) 2024/1143.

14. Uses of geographical indications outside geo-protection:

Uses of geographical indications outside geo-protection: What is the scope of protection there?

Reply: This question is not clear and should be further clarified.

15. Certification of compliance with the product specification shall be provided in accordance with Article 45(1) of Regulation (EU) 2024/1143 either by issuing a physical or digital certificate or by entering it in the ‘list’ referred to in Article 39(1) of Regulation (EU) 2024/1143 or Article 116a of Regulation (EU) No 1308/2013:

In accordance with the new Article 116a(3) of Regulation (EU) No 1308/2013, the Member States are bound to draw up a list accordingly. Therefore, the question arises as to what is meant by the word ‘as applicable’ before ‘the list referred to in Article 116a of Regulation (EU) No 1308/2013’ in Article 45(1)(b) of Regulation (EU) 2024/1143.

Reply: Article 45(1)(b) reads: “(b) inclusion in a list of approved operators established by the competent authority, such as the list provided for in Article 39(1) of this Regulation or Article 116a of Regulation No 1308/2013, as applicable. The relevant extract of the list (‘listing’) shall be made available online to each approved operator.”

The meaning of “as applicable” is that if it is a wine, Article 116a of 1308/2013 applies, and if it is food or spirit drink, Article 39(1) of R 2024/1143 applies.

16. Under Article 120(1)(h) of the CMO Regulation, the abbreviations ‘PDO’ or ‘PGI’ may also be used optionally. Recital 49 of Regulation (EU) 2024/1143 adds that these abbreviations can only be added to the mandatory indication of the terms ‘protected designation of origin’ or ‘protected geographical indication’:

We presume that the basic aim is to ensure that the terms ‘protected designation of origin’ or ‘protected geographical indication’ appear on a label at least once.

We would be interested in the Commission's intentions behind this approach. This would help to reach a common understanding with the Länder on how to interpret the rules in case of doubt.

Reply: Under Regulation (EU) No 1308/2013, before it was amended by Regulation (EU) 2024/1143, the use in labels of the abbreviations 'PDO' and 'PGI' in the wine sector was never authorized. Following the amendments from Regulation (EU) 2024/1143, as clarified in recital 49 and in accordance with Article 84(12) of Regulation (EU) 2024/1143, it is now possible to add the abbreviations 'PDO' and 'PGI' on labels of wines.

The present opinion is provided based on the facts as set out in your email messages of 26 July and 26 August 2024, and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving European Union law, it is for the Court of Justice of the European Union to provide a definitive interpretation of the applicable European Union law.

Yours faithfully,

DIEGO CANGA FANO