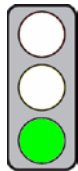


KEY ISSUES

Objective of the Green Paper: The Commission discusses whether and how geographical indications for non-agricultural products can be protected EU wide.

Affected parties: Consumers and companies.



Pro: (1) Protected geographical indications strengthen consumer confidence in indications of origin.

(2) They provide greater legal certainty for consumers and businesses particularly when they are formulated as a European right.

(3) Registering geographical indications in a central register enables people to check at no great expense whether a geographical indication is protected.

Contra: –

Content

Title

Green Paper COM(2014) 469 of 15 July 2014: Making the most out of Europe's traditional know-how: a possible **extension of geographical indication protection** of the European Union **to non-agricultural products**

Brief Summary

► Context and Objectives

- Consumers expect products with a special regional connection, e.g. Black Forest cuckoo clocks, to have certain characteristics. Protected geographical indications can help to fulfil such expectations, e.g. by guaranteeing quality.
- A protected geographical indication consists of a product denomination – e.g. a name or a symbol – which contains the geographical origin of a product. A protected geographical indication may be used by all producers provided their products (p. 4 and 6)
 - originate from the specified geographical origin and
 - possess established product characteristics – e.g. quality features, production methods or "reputation" – attributable to that place of origin.
- A protected geographical indication is an intellectual property right (cf. ECJ Judgement Prosciutto di Parma, C-108/01, para. 64) like a trade mark or patent (S. 7).
- With this Green Paper, the Commission wants to examine (p. 5)
 - whether the protection of geographical indications for non-agricultural products is necessary and
 - how such protection can be regulated where appropriate EU wide.

► Existing protective regulations for non-agricultural products

- **International regulations:** International treaties – e.g. the WTO agreement on trade-related aspects of intellectual property rights (TRIPS) – protect in particular against the misleading use of a product's geographical origin (cf. Art. 22 TRIPS agreement). The TRIPS agreement is binding for the EU and all Member States.
- **European regulations:** There is currently no standard EU-wide protection of geographical indications for non-agricultural products. The following regulations do exist however:
 - The Regulation on the Community trade mark [(EC) No. 207/2009] allows for the registration of EU-wide trade marks containing or consisting of the place of origin. In particular, a group of producers can register a "Community collective mark". The group must issue regulations governing use of the mark which can contain requirements relating to the place of origin and product characteristics [Art. 66 et seq. Regulation (EC) No. 207/2009].
 - The Directive on unfair commercial practices protects against the misleading use of the geographical origin of a product [Art. 6 (1) Directive 2005/29/EC; cf. in Germany: Section 5 (1) of the act against unfair competition (Unfair Competition Act, Gesetz gegen den unlauteren Wettbewerb) and Section 127 (1) of the act on the protection of trade marks and other symbols (Trade Mark Act, Markengesetz)].
- **National regulations:**
 - Trade mark law in the Member States can provide for the registration of national trade marks which contain or consist of the place of origin. In Germany for example, a group can register a collective mark (Sections 97 et seq. Trade Mark Act).

- In addition, special provisions – e.g. for specific crafts or products – can protect geographical indications. In Germany, legislation can be adopted to protect specific geographical indications (Section 137 Trade Mark Act). This basis has so far only been used for the regulation adopted to protect the name Solingen in relation to Solingen cutlery. In addition, the German Trade mark Act protects in particular against products which have a specific origin but do not have the characteristics – such as quality – for which that place of origin is recognised (Section 127 (2) Trade Mark Act).

► **Existing protective regulations for agricultural products as a point of comparison**

- Geographical indications for agricultural products such as *Swabian Spätzle* are protected EU-wide by the Regulation on quality schemes for agricultural products and foodstuffs [Regulation (EU) No. 1151/2012].
- The Regulation protects against the misleading use of geographical indications and prohibits "evocations" of geographical indications, e.g. by way of translation or by using the words "style" or "type".
- The Regulation provides for a registration procedure. Registration takes place in a central register once a Member State and the Commission have examined the application.
- Parallel national protective measures are not possible.
- The Commission regards this Regulation as a "point of comparison" for corresponding provisions for non-agricultural products (p. 13).

► **Advantages of protected geographical indications for non-agricultural products**

- EU-wide protected geographical indications increase the attractiveness of the protected product (p. 9)
 - for consumers because the place of origin and specified product characteristics are guaranteed,
 - for producers using a protected geographical indication because it allows them to increase their turnover.
- This may result in (p. 6, 9)
 - the preservation of jobs, particularly in the place of origin and
 - investments in new technologies and innovations by producers in order to preserve product characteristics and at the same time remain competitive.
- Guaranteeing the place of origin and the product characteristics makes it easier for producers to "access promotion funds and investment aid" (p. 9).
- Protected geographical indications prevent fraud, e.g. by way of counterfeit products (p. 9).
- Well-known protected geographical indications can improve the image of the place of origin. This may promote tourism and cultural activities in the place of origin and create more jobs (p. 9).
- EU-wide protection may improve the international protection of geographical indications for EU products because it strengthens the EU's position in negotiations on trade agreements with (p. 10)
 - non-EU states since the latter are interested in better protection for their own products in the EU, and
 - the WTO, under whose auspices the EU is currently negotiating a higher level of protection for all products.
- Protected geographical indications may contribute to preserving Europe's historical, cultural and social heritage because they maintain e.g. the traditional know-how about production methods (p. 10).

► **Granting protection for geographical indications and implementation**

- According to the Commission, a geographical indication should only be protected if the products have quite specific product characteristics such as quality features, production methods or reputation and these in turn are closely linked to the place of origin (p. 16).
 - The "description" of these product characteristics in the product specification "ensures" stable product quality. The Commission is considering imposing quality requirements e.g. by setting a "minimum quality level". (p. 17).
 - The requirements for a close link between the product characteristics and the place of origin may lie between two extremes based on the fact that (p. 16 et seq.)
 - only certain production steps have to be carried out in the place of origin and the raw materials do not have to come from the place of origin or
 - all production steps take place in the place of origin and the raw materials must also come from the place of origin.
- The Commission considers both options to be possible - where appropriate as two parallel schemes of protection - but realises that the second option would only apply to "a few" non-agricultural products.
- The Commission is considering imposing the condition, as the sole or as an additional requirement, that a product should already have a "reputation" in order to be protected by way of a geographical indication (p. 18).
- The Commission is considering the introduction of checks on whether a close link to the place of origin does exist and whether the requirements on product characteristics are also maintained after registration (p. 17).
- Certain product denominations involving geographical indications are excluded under the TRIPS agreement from protection (Art. 24 TRIPS agreement). This applies e.g. to generic terms, i.e. common names such as Eau de Cologne. The Commission is considering whether to add "other exceptions" in addition to those set out in the TRIPS agreement. (p. 15)

- The Commission is considering whether to set up the protection of geographical indication (p. 19)
 - as a European right, existing either exclusive or alongside national rights, or
 - as a national right with mutual recognition by all Member States; this would require the harmonisation of national legislation on geographical indication.
- **Registration of geographical indications for non-agricultural products**
 - The registration procedure could involve two stages (p. 19 et seq.)
 - Stage 1: National authorities examine e.g. compliance with the link to place of origin and product characteristics.
 - Stage 2: A central EU authority examines whether "EU-wide criteria" are complied with.
 - The Commission is considering, in particular, whether (p. 20 et seq.)
 - registration should be indefinite or for a limited duration with the possibility of extension,
 - not only groups of producers but e.g. also individual producers, chambers of commerce and consumer associations should be able to apply for registration – although, here too, the geographical indication can be used by any producer who meets the requirements –,
 - objections to the planned registration can be raised, e.g. where existing rights such as trade marks are jeopardised, and
 - registration should be cancelled, e.g. where product characteristics are not maintained.
 - Geographical indications could be entered into a central register administered e.g. by the Commission (p. 20).

Policy Context

The Commission considered the protection of geographical indications for non-agricultural products in 2011 in its Communication on "A Single Market for Intellectual Property Rights" [COM(2011) 287, see [cepPolicyBrief](#)]. A study was published in February 2013, commissioned by the Commission, on the protection of geographical indications for non-agricultural products in the internal market which argued in favour of EU-wide legislation. The Commission held a public hearing on the subject in April 2013. This Green Paper is the result of the hearing.

Options for Influencing the Political Process

Directorates General:	DG Internal Market, Industry, Entrepreneurship and SMEs (leading)
Committees of the European Parliament:	Legal Affairs (leading), Rapporteur: Virginie Rozière (S&D Group, F); Internal Market and Consumer Protection; Culture and Education; International Trade
Federal Ministries:	Justice and Consumer Protection (leading)
Committees of the German Bundestag:	Legal Affairs and Consumer Protection (leading); Economy and Energy; EU Affairs

ASSESSMENT

Economic Impact Assessment

Where consumers associate a particular product characteristic with the regional origin of a product, an indication of origin can reduce their search costs. For this to work, the indication of origin can only be permitted where the product has the characteristics which the consumer expects it to have. The legal protection of the indication of origin can then safeguard companies – particularly small and medium-sized companies – from misuse by competitors thus increasing willingness to invest. Misuse by competitors exists, for example, where regional companies use the reputation of the geographical origin even though their product characteristics do not correspond to consumer expectations.

Until now, indications of origin have been primarily protected under community collective marks. However, these provide insufficient opportunity for prohibiting businesses in a region from misusing indications of origin. This is necessary because individual producers can increase their profits by referring to the origin of their products without delivering the quality expected by the consumer. In addition, on registration of a community collective mark, no checks are carried out as to whether the product characteristics specified in the regulations governing use of the mark correspond to the expectations of the consumer. And no check is made as to whether the mark requirements are actually complied with. The obligation in this regard is purely voluntary. **Introducing a protected geographical indication** may remove these weaknesses particularly because such protection is easier to enforce before court than are voluntary obligations. This **strengthens consumer confidence in indications of origin**.

It is however doubtful whether – as the Commission claims – the protection of geographical indications makes it easier for producers to access government promotion funds and investment aid. This would also be inappropriate because investment decisions based on aid either lead to the inefficient use of scarce resources thus delaying structural adjustments, or give rise to the windfall effect.

A general rule requiring all production steps to take place in the place of origin and for raw materials to come from the place of origin is inappropriate because consumer expectations differ from product to product. It is the job of the authorities to check, during the process of registration in the individual case, whether the

planned requirements of geographical indications correspond to consumer expectations. In this regard, authorities must ensure that the requirements applicable to a product protected by a geographical indication are not too restrictive as otherwise there is a risk that the geographical indication will have the effect of foreclosing the market. One possibility would be to provide proof of consumer expectations by way of a mandatory representative consumer survey which would have to be submitted by the producers on application to register a geographical indication. This ensures that product characteristics are defined in accordance with consumer expectations.

In addition, only those products which already have a corresponding reputation, such as a long-standing, regionally-based tradition, should be eligible for protection by way of geographical indication otherwise there is a risk that consumers would be misled by the geographical indication because – even if they had no specific expectations about the product characteristics – they would at least assume a long tradition where none existed. Furthermore, it would not be possible to specify product characteristics according to consumer expectations which is the original purpose of the geographical indication.

The ex-post checks being considered by the Commission ensure that products protected by geographical indication continue to comply with the necessary requirements even after registration. This increases consumer confidence.

By comparison with national rights with mutual recognition, setting up the geographical indication as a European right provides greater legal certainty for consumers and businesses, because Member States have no flexibility when it comes to implementation and thus diverging interpretations by national courts are kept to a minimum.

A geographical indication which applies for a limited duration may ensure that, when the geographical indication is extended, there is regular monitoring of whether product characteristics are still in line with consumer expectations. For this to work such monitoring has to be required by law. It will also ensure that the contents of the register are kept up to date. Regular monitoring and extension of the period of protection of geographical indications will however give rise to expenditure on bureaucracy. With that in mind, basing legislation on the rules applicable to community collective marks is appropriate. These have a limited period of protection of ten years with the possibility of extending it for a further ten years as often as desired.

Registering geographical indications in a central register enables people to check at no great expense whether a geographical indication is protected. This speeds up the registration process for new geographical indications and makes it easier to prove misuse of geographical indications. Legal certainty increases.

Legal Assessment

Legislative Competency

The power to introduce possible legislative follow-up measures depends whether a European right is to be created or whether the aim is to achieve harmonisation of national rights with mutual recognition:

Since it contributes to the completion of the internal market, a European right can be based on the competence to protect intellectual property rights (Art. 118 (1) TFEU): geographical indications are intellectual property rights. A European right promotes the internal market because it enhances consumer confidence in products with geographical indications which in turn facilitates sales in other Member States.

Harmonisation of national rights and their mutual recognition can be based on the competence to adopt measures for the approximation of laws in the internal market (Art. 114 TFEU) because this also increases consumer confidence in products with geographical indications.

Subsidiarity

Not currently assessable.

Proportionality with Respect to Member States

Not currently assessable.

Compatibility with EU Law in other Respects

Not currently assessable.

Impact on German Law

In the case of legislative follow-up measures by the EU – in particular the creation of an exclusive European right – national law concerning the protection of geographical indications would have to be adapted.

Possible future follow-up measures by the EU

The EU could adopt a Regulation for the protection of geographical indications for non-agricultural products which is similar to the Regulation applicable to agricultural products [Regulation (EU) No. 1151/2012].

Conclusion

Protected geographical indications strengthen consumer confidence in indications of origins. They provide greater legal certainty for consumers and businesses particularly when they are formulated as a European right. Registering them in a central register enables people to check at no great expense whether a geographical indication is protected.