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### WORKING DOCUMENT

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From:	Presidency
To:	Special Committee on Agriculture
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Subject:	Regulation on geographical indications and quality schemes – Preparation of the third trilogue

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Delegations will find in the Annex a Presidency note with a view to preparing the third trilogue on the Regulation on geographical indications and quality schemes, to be held on 10 October 2023.

Any suggested drafting changes compared to the Council's negotiating position set out in 8598/23 REV2 are indicated in yellow. Compared to the Commission original proposal, the suggested changes are marked in **bold underlined** for added text and strikethrough for text deleted.

## QUESTIONS FOR THE SCA

The Presidency would like to invite delegations to exchange views on the following outstanding political issues and compromise suggestions:

### **1. PRODUCER GROUPS AND RECOGNISED PRODUCER GROUPS**

The Council shares the interest of the Parliament and the Commission in extending the protection of geographical indications (GIs), strengthening the role of producer groups and increasing the use of GIs throughout the EU.

The Presidency believes that the Council's position agreed on 8 May 2023 provides a very good basis for achieving these objectives.

The general idea of the Council position is to provide the necessary minimum Union rules on producer groups and recognised producer groups (RPGs) so that those groups can act in favour of protection the GI as collective intellectual property rights. It aims to allow the 4 Member States that already have national systems of RPG to maintain them while leaving the choice to the other 23 MS whether to set up a recognition system or not.

The European Parliament wants to oblige Member States to set up a recognition system for GI producer groups. This is unacceptable for the Council as it would oblige the 23 Member States that currently do not have a recognition system to establish one, without knowing whether any producer group would be interested in becoming recognised. This would entail a very heavy workload for these Member States with an uncertain added value.

The European Parliament, in return for maintaining the voluntary approach, asks to establish in the Regulation a system of incentives for RPGs. Such incentives could include enabling RPGs to recommend to the national authorities binding rules in accordance with Art. 166a of the CMO-Regulation (see row 339 of the 4-column document set out in 12987/23) or to agree with downstream operators on value-sharing clauses (see row 339a).

***Questions:***

***- Would you agree to establish an incentive scheme?***

***- If so, what measures do you consider appropriate for the promotion of these RPGs?***

## **2. INGREDIENTS**

The Council mandate establishes the obligation for producers of prepacked food who wish to use the name of a GI used as an ingredient in the name of that food to notify the recognised producer group beforehand.

The Parliament proposes to make the use of the GI name in the name of a prepacked food subject to a prior authorisation by RPGs and, where RPGs do not exist, to allow a majority of producers to establish minimum conditions for the fair use of the name..

The Presidency's aim is to reach an agreement with the EP while maintaining the basic principle of the Council's mandate, a prior notification rather than prior authorisation and with a view to guaranteeing a level-playing field for all operators.

Based on this principles and taking into account the need to reach a compromise with the Parliament, the Presidency proposes the following two drafting options for Article 28.

The Presidency would like to draw attention to the fact that the main difference between these two alternative compromise suggestions is the approach for the producer group to set the requirements on the use of the GI ingredient in the name of the processed product:

- In the first drafting option, these requirements can be set by the recognised producer group in the product specification. This allows to ensure transparent and fair conditions for all operators as they have been previously approved by the competent authorities.

- In the second drafting option, the requirements can be established by the recognised producer group by means of a written communication to the producer of the processed food. In this case, these requirements are only technical visual requirements that are in compliance with the general rules of Regulation 1169/2011. These requirements must be made public by RPGs to ensure that they comply with the requirements of non-discrimination between operators, as set out in the regulation.

Drafting option 1:

*Article 28*

**Use of geographical indication designating a product used as an ingredient in the name of a processed products**

~~1. Article 27 is without prejudice to the use of a geographical indication by operators in conformity with Article 36 to indicate that a processed product contains, as an ingredient, a product designated by that geographical indication provided that such use is made in accordance with honest commercial practices and does not weaken, dilute or is not detrimental to the reputation of the geographical indication.~~

2. **Without prejudice to Articles 27 and 37 (6) of this Regulation and to Articles 7 and 17 of Regulation (EU) No 1169/2011,** the geographical indication designating a product **used as an ingredient in a processed product** shall ~~not~~ **may** be used in the food name of the related ~~that~~ processed product, **or in its labelling, or in advertising material** ~~where:~~ ~~except in cases of an agreement with a producer group representing two thirds of the producers:~~

**(a) the processed product does not contain any other product comparable to the ingredient designated by the geographical indication;**

**(b) the concerned ingredient designated by geographical indication is used in sufficient quantities to confer an essential characteristic on the processed product concerned; and**

(c) the percentage of the concerned ingredient designated by geographical indication in the processed product is indicated in the label.

2a. In addition, producers of a prepacked food as defined in Article 2(2)(e) of Regulation (EU) No 1169/2011, containing as an ingredient a product designated by a geographical indication, who want to use that geographical indication in the name of that prepacked food, including in advertising material, shall give a prior notification to the recognised producer group where such a group exist for the concerned ingredient designated by a geographical indication. They shall include in the notification the information that demonstrates that the conditions referred to in paragraph 2 are complied with. The recognised producer group shall acknowledge it with reference to the requirements that appear in the product specification, in this case.

2b. A recognised producer group may include in the product specification other requirements in the meaning of Article 51(2)(c) and of this Regulation and Article 94(1)(i) of Regulation (EU) N° 1308/2013 on the use of the geographical indication of the ingredient in the name of the processed food. Such requirements shall not refer to any payments from the producer of the processed food to the recognised producer group.

This article shall not apply to spirit drinks.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 84 supplementing this Regulation by additional rules on the use of geographical indications of the ingredient to identify ingredients referred to in paragraph (1) of this Article with reference to the use of comparable products as ingredients and the criteria of conferring essential characteristics on the processed products.

**Use of geographical indication of an ingredient in the names of a processed products**

1. ~~Article 27 is without prejudice to the use of a geographical indication by operators in conformity with Article 36 to indicate that a processed product contains, as an ingredient, a product designated by that geographical indication provided that such use is made in accordance with honest commercial practices and does not weaken, dilute or is not detrimental to the reputation of the geographical indication.~~

2. **Without prejudice to Articles 27 and 37(6) of this Regulation and to Articles 7 and 17 of Regulation (EU) No 1169/2011**, the geographical indication designating a product **used as an ingredient in a processed product** shall not **may** be used in the food name of the related **that** processed product, **or in its labelling, or in advertising material where**: ~~except in cases of an agreement with a producer group representing two thirds of the producers:~~

**(a) the processed product does not contain any other product comparable to the ingredient designated by the geographical indication;**

**(b) the concerned ingredient designated by geographical indication is used in sufficient quantities to confer an essential characteristic on the processed product concerned; and**

**(c) the percentage of the concerned ingredient designated by geographical indication in the processed product is indicated in the label.**

**2a. In addition, producers of a prepacked food as defined in Article 2(2)(e) of Regulation (EU) No 1169/2011, containing as an ingredient a product designated by a geographical indication, who want to use that geographical indication in the name of that prepacked food, including in advertisement material, shall give a prior notification to the recognised producer group where such a group exist for the concerned ingredient designated by a geographical indication. They shall include in the notification the information that demonstrates that the conditions referred to in paragraph 2 are complied with.**

**2b. The recognised producer group concerned may provide additional specific technical visual requirements, in writing, only regarding the way in which the geographical indication designating the ingredient may appear in the labelling, elsewhere than in the list of ingredients, or in advertising material. Such requirements shall not refer to any [financial] payments from the producer of the processed food to the recognised producer group, shall not be discriminatory and shall be in compliance with the labelling rules provided in Regulation (EU) No 1169/2011. The producers of prepacked food to whom the requirements are addressed shall comply with such requirements.**

**2c. The recognised producer groups shall make public on their website, or in the absence thereof they shall make available upon request, the requirements addressed to the specific producer of prepacked food including the additional requirements referred to in paragraph 2b.**

**This article shall not apply to spirit drinks.**

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 84 supplementing this Regulation by additional rules on the use of geographical indications **of the ingredient** ~~to identify ingredients referred to in paragraph (1) of this Article~~ **with reference to the use of comparable products as ingredients and the criteria of conferring essential characteristics on the processed products.**

*Question:*

*Which of these drafting suggestions would you consider acceptable?*

### 3. SUSTAINABILITY

The Council wants to strengthen the sustainability aspects of the GIs and to allow PG or RPGs to agree on sustainability practices that aim to apply higher sustainability standards than those set out in Union legislation. However, great importance is attached to keeping the provisions of the Regulation simple so that they do not interfere with the COM proposal on sustainable food systems.

The European Parliament wants to include animal welfare as a part of sustainability, establish a list of objectives to which the sustainability undertakings are expected to contribute and provide the PGs the possibility to produce sustainability reports, in line with the harmonised format and the online presentation decided by the Commission.

The Presidency would like to look for solutions to reach an agreement to be accepted by the EP while keeping the system simple and with as less workloads as possible.

#### ***Question:***

***In a spirit of compromise and view a view to finding a balanced package, could you consider the following approach?***

- Include animal welfare in this article as well;
- Replace the list of objectives by a recital or, if this is not possible, to shorten the list and simplify this provision;
- Provide for the possibility that producer groups produce voluntary sustainability reports to communicate their sustainable efforts without imposing on them any harmonised format or online presentation.

### 4. DOMAIN NAMES

The EP proposes to go beyond a "country level" protection in the protection of GIs in internet domains and to establish a system of "geo-blocking" of the online surfaces that use the name of a GI.

The "geo-blocking" system, according to EP suggestion, should aim at cutting the access in the Union to domain names that infringe the protection of GI independently of the place of registration of such domain names.

On the one side the possibility to target illegal content when the provider is established outside the Union among the possibilities governed by Regulation (EU) 2022/2065 on a Single Market For Digital Services (Digital service Act). On the other side it is more appropriate, when using this possibility, to remain in the legal framework and safeguards established by the Digital Service Act. This regulation mentions the domain names (domain name system (DNS) services, top-level domain name registries) among the online services that form part of its scope and provides for possibilities for the competent national authorities to order cessation of the infringement, for example by removing or disabling the access to such domain names on the territory of the Member States subject to necessity and proportionality analysis and in respect of the EU Charter of the fundamental rights.

Therefore, in order to strengthen the protection of GI against domain names and to find a compromise with the EP, a solution that is line with the Digital Service Act seems preferable.

Article 34 would be maintained according to the Council's position. To find a compromise with the EP, Art. 43(2) would be amended as follows:

Article 43(2):

“2. ~~Competent~~**Relevant national judicial or administrative** authorities of the Member States may, issue an order to act in accordance with Article 89 of Regulation (EU) ~~2022/xxx~~ **2022/2065, issue an order to act** against illegal content as-referred to in paragraph 1 of this Article, **including, where necessary, to remove or disable access via online surfaces to domain names accessible to the Union independently from the place of their registration that are used in breach of Article 27(3).**”

**Question:**

***Would you consider this approach acceptable?***

## 5. WINE PACKAGE

The Council's mandate keeps in the scope of this Regulation, and therefore outside the CMO, the provisions on:

- Registration procedure, modifications, cancelations and opposition
- Legal protection
- Labeling
- Controls
- Sustainability.

The provisions on the definitions, product specification, single document and traditional terms (procedure, control and protection) remain however in the CMO.

The EP wants to leave all provisions in the CMO, apart from the provisions related to the registration procedure, modifications, cancelations and opposition.

### **Question:**

***Which provisions do you consider necessary to be maintained in the CMO?***

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