



THIRD UKRAINE – EU SUB-COMMITTEE ON GEOGRAPHICAL INDICATIONS

15 MAY 2019, KYIV

Joint report

1. The third meeting of the Ukraine-EU Sub-Committee on Geographical Indications (hereinafter referred to as the Sub-Committee) took place on 15 May 2019 in Kyiv, Ukraine. It was chaired by the Ministry of Economic Development and Trade of Ukraine. The EU side was represented by Directorate General for Agriculture and Rural Development, European Commission.
2. The Agenda was agreed and adopted.
3. The Sub-Committee verified the contact points. Chief Specialist, Sector of Cooperation with National and International Institutions in Intellectual Property Sphere, Department for Intellectual Property, the Ministry of Economic Development and Trade of Ukraine will continue as the Secretary for the Ukrainian side and Unit A.5: Neighborhood and Enlargement, Directorate-General for Agriculture and Rural Development, European Commission, will take over the functions of the Secretary for the EU side till January 2020.
4. The parties exchanged information on legislative and policy developments on geographical indications:
 - The Ukrainian side indicated that the GIs framework draft law No 6023 “On Amendments to Certain Legislative Acts of Ukraine on Improvement of Legal Protection of Geographical Indications” was being amended in the Verkhovna Rada (the Parliament) of Ukraine after its first reading. The amendments were jointly considered and agreed by the Ministry of Economic Development and Trade of Ukraine (MEDT), the Ministry of Agrarian Policy and Food of Ukraine (MAPF), European Commission Delegation to Ukraine and EU Technical Assistance Project. This draft law was supported

by the profile Parliamentary Committee. But since 4 October 2018, the draft law has been waiting in the Parliament for adoption in the second reading and as a whole.

It was emphasized that on the initiative of the Government of Ukraine the draft law was repeatedly included into the agenda of the plenary sessions of the Parliament of Ukraine. The importance of the adoption of this draft law was also emphasized by the First Vice Prime Minister of Ukraine – the Minister of Economic Development and Trade of Ukraine.

- The following draft laws, besides draft law No 6023, are being prepared by the Ukrainian side with the support of the EU Technical Assistance Project on GIs:
 - "On the legal protection of geographical indications, rights to guaranteed traditional features and the use of optional quality schemes for agricultural products and foodstuffs" (the first draft, prepared with the support of the EU experts, was revised and modified, and for now it is under consideration by the MAPF);
 - "On Amendments to the Law of Ukraine "On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Spirit, Alcoholic Beverages and Tobacco Products" on improving the legal protection of geographical indications for alcoholic beverages". The analysis of the national legislation in this sphere aiming at the determination of the competence of the inspection bodies and the conformity assessment bodies is being carried out.
 - and the draft law "On GIs for wine and aromatised wine products" (organigram of the control bodies and organization of the control system are under discussion and development).
- The Ukrainian side provided information on the Draft Law 9439 "On Amendments to the Law of Ukraine" On State Regulation of Production and Circulation of Alcohol, Cognac and Fruit Spirit and Alcoholic Beverages" and the Law of Ukraine "On Grapes and Grape Wine". It was emphasized that this draft is aimed at ensuring the preservation of the domestic raw material base and the further functioning of the vine / wine industry, and at the preservation and

development of authentic products that in future could replace the “Cognac of Ukraine”. In the Draft Law 9439 it is clearly stated that after the end of the 10-year transition period, in compliance with the provisions of the DCFTA under the Association Agreement between Ukraine and the EU, the term "Cognac of Ukraine" as a national authentic product will get a new name.

The state executive bodies of Ukraine (MAPF, MEDT, Ministry of Finance, State Regulatory Service, State Fiscal Service and Ministry of Justice) supported the abovementioned Draft Law.

The Ukrainian side asked whether the EU side would support the Draft Law 9439. It was agreed that the Ukrainian side would forward the Draft Law 9439 to the EU side for consideration, further comments and proposals. The Ukrainian side underlined that proposals provided by the EU side could be taken into account and included to the draft law between the first and the second reading. It was agreed that the EU side would consider the issue of supporting the Draft Law 9439 after detailed consideration of the Draft.

- The EU side informed that the legislation in the wine sector entered into force in the last part of 2018:
 - Commission Delegated Regulation (EU) 2019/33 of 17 October 2018. This regulation lays down rules supplementing Regulation (EU) No 1308/2013 concerning protected designations of origin, protected geographical indications and traditional terms, in addition to labelling and presentation in the wine sector as regards: (a) applications for protection; (b) the objection procedure; (c) restrictions of use of protected designation of origin and protected geographical indications (d) amendments to product specifications and modifications of traditional terms; (e) cancellation of protection; (f) labelling and presentation. It replaces and repeals the provisions of Commission Regulation (EC) No 607/2009.
 - Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 lays down the rules concerning protected designations of origin, protected geographical indications and traditional terms, in the wine sector, as regards: application for

protection, objection procedure, amendments to product specifications and modifications of traditional terms, the register, cancellation of protection, the use of Union symbols, checks and communications.

- As regards the spirit drinks the EU side mentioned that amendments to the basic Regulation were introduced by Regulation (EU) 175/2018. These changes bring greater clarity on the labelling and production methods for spirit drinks. The European Parliament and the Council reached a political agreement on 27 November 2018 on the new basic Regulation regarding the production and labelling of spirit drinks and for the registration and protection of spirit drinks registered as geographical indications (GI) and repealing Regulation (EC) No 110/2008. The new basic Regulation will provide for clearer labelling of spirit drinks across the EU and their composition will be harmonised at EU level. The creation of a register of Member States' control authorities will also facilitate the work of the national enforcement forces to make sure that consumers get the genuine products. Terms of spirit drinks registered as GIs such as Cognac, Irish Cream, Genever or Ouzo will also be better protected against misuse as ingredients and against the registration of similar trademarks. The new Regulation was published in the EU Official Journal on 17 May ([OJ L130](#)). Most of the new rules will become applicable as of 2021.
- The EU side provided information on the new public database 'eAmbrosia - the EU Geographical Indications registers' that was launched on 1 April 2019 and provides easy access to information on all EU GIs including their status (applied, published and registered), their product specification, and a direct link to the legal basis when they are officially protected. Throughout 2019, the launch will be in three phases. Initially, the database will only comprise EU GI wines. By summer 2019, it will include EU GI spirit drinks. Finally, by the end of 2019, all EU GI agri-food products will be part of eAmbrosia.
- The Ukrainian side had the following questions:

Q:“Whether the Ukrainian geographical indications that have already gotten protection under the Association Agreement would be included to the eAmbrosia?”

and “To which databases new Ukrainian geographical indications that are under consideration by the EU side after getting protection will be included?”

A: The EU side answered that geographic indications of third countries that are already protected in the EU unless they are registered through direct application will not be in eAmbrosia. They will be (and are already) uploaded in a form of an Excel table on Europa website. The E-Bacchus database is not updated anymore.

- The EU side informed that in the framework of the CAP reform, there are plans to merge the aromatized wines and the foodstuff legislation. The reason is that cider is already for example included in the foodstuff regulation, and currently there are only a few aromatized wines protected in the EU. It was mentioned that all information and relevant legal acts from recently updated quality policy section could be find on website: https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels_en

5. Amendment of Annex XXII C and D of the Agreement:

a) Technical discussions on GIs proposed by Ukraine

The Ukrainian side provided comments/clarifications on issues raised in the letter sent in January 2019 by the EU side on the Ukrainian respective GIs lists (on product description, product categories, control bodies, link between the GI and the geographical area).

The EU is waiting for a written reply to the letter sent in January 2019 with the remaining questions on the list and specifications of new Ukrainian GIs.

The Commission asked whether MAPF indicated as competent authority carries out checks both on the market and on the production of GIs?

The representative of MAPF answered that after the drafting and adoption of the legislation on geographical indications, the next step would be the establishment of market-based monitoring of the products with GIs. Thus,

the legislation, as well as by-laws, defining the responsibilities and key stages, procedure of controlling, should be adopted on the first stage. The State Service of Ukraine for Food Safety and Consumer Protection would be envisaged as the body for carrying out the control function in the framework of the market control (concerning marking), the indirect control on production of products with GIs and control on the certification bodies.

b) Technical discussion on GIs proposed by the EU

In January 2019, the EU side sent the corrected list of EU GIs. In addition, as agreed at the previous sub-committee meeting the EU side also indicated in this corrected list more specific product categories for EU Annex I on foodstuff GIs. The EU asked about the following steps to be taken by the Ukrainian side in order to approve the new EU GIs.

The Ukrainian side informed that the corrected list is under consideration by the MAPF and MEDT. Draft Order of the MEDT "On Updating of Annexes XXII-C and XXII-D to the Association Agreement" is under consideration and internal approval.

Technical issues on the updating/amendment of Annexes XXII-C and XXII-D, drafting and approval of decision of the Sub-Committee in accordance with the rules of procedure of the Sub-Committee were also discussed.

The Ukrainian side expressed its position on reasonability of synchronized updating of the list by both sides.

6. Exchange of information/issues on the enforcement of the agreement.

The Ukrainian side raised the question of the protection of geographical indications of Ukraine originating from the temporarily occupied territory of the Autonomous Republic of Crimea. It was noted that six out of the seven Ukrainian GI's on the list of GI's handed over to the EU originated from the territory of the Autonomous Republic of Crimea temporarily occupied by the Russian Federation. It was emphasized that all GI's of Ukraine should be legally protected on the territory of the EU without any prejudice and action that may be interpreted as a direct or non-direct recognition of the change of status of the Autonomous Republic of Crimea or a legitimation of its annexation by the Russian Federation.

The Ukrainian side re-expressed concerns regarding the presentation during exhibitions in EU member-states of Ukrainian GIs wines, protected

under the Association Agreement, with an indication as originating from the Russian Federation.

The EU side expressed its regret that the Ukrainian GI wines from Crimea were presented and awarded at the Black Sea Wine contest while Russia was indicated as their country of origin. The EU side contacted the Bulgarian authorities on this issue (their reply has been forwarded to the UA side) and asked them to take appropriate measures. In their reply BG has assured that no sales of these GI products took place at the contest and that its organizers have been warned to respect the protection of UA GIs in the future.

The Ukrainian side asked to forward the copy of the reply to the Secretary for the Ukrainian side.

7. The Ukrainian side provided information on the state of play on the Asti case (information of the Antimonopoly Committee of Ukraine), an EU GI protected under the Association Agreement. The EU side expressed satisfaction that the case on the enforcement of this EU GI protection had advanced and expressed the hope that it would be an example to prevent potential other cases.
8. At last year's GIs subcommittee meeting the Ukrainian side encouraged the EU GI rights holders to inform the Ukrainian customs authorities about their registered GIs and to enter their GIs in the Customs register and thus assuring protection at UA customs borders.

The EU side sent the list of EU control bodies for the Ukrainian customs officials to contact in case of their own initiative checks on goods with GIs.

As regards right holders and filing an application in order to have their GI introduced in the Ukrainian Customs register, the EU side informed that the EU system foresaw that GI products were produced by producer groups and that any producer conforming with the specifications can have its product protected by the concerned GI. GIs are collective IPRs, which means that there is no one single right holder. The EU side indicated that the system of obligatory pre-registration in the Register as established under UA legislation seems quite burdensome.

The Ukrainian side informed that entering GIs into the Custom register is not obligatory, is free of charge, and the procedure is not complicated. The whole procedure is prescribed in the decree and the Ukrainian side (State

Fiscal Service of Ukraine) had not received any request for clarification on this procedure from EU stakeholders.

It was agreed that the Ukrainian side would provide more explanations on the procedure on entering GIs in the Customs register (Does it apply also for GI for which customs act on their own initiative? Are there fees? Is the attorney required for the registration? Etc.)

9. The parties took stock of the work of the technical assistance project on GIs. Both sides reconfirmed their commitment for close co-operation.
10. The parties adopted the operational conclusions of the meeting.

Other issues (rebranding of ‘UA cognac’ and the definition of whiskey):

Rebranding of ‘UA cognac’:

The Ukrainian side informed that as of November to December 2018, eight regional hackathons under the auspices of the MAPF were held with the purpose of seeking alternative new name suggestions instead of "Cognac of Ukraine". Representatives of the MAPF, MEDT, producers of cognac in Ukraine, retail networks, restaurants, businesses, education and science stakeholders, as well as profile associations, marketers, etc. were involved.

The final proposals of each of the hackathons and name options that gained the greatest support from the focus groups were made public for on-line voting.

On April 25 2019, a coordination meeting of experts from the EU Technical Assistance Project, top managers/owners of Ukraine cognac businesses, representatives of the European Commission, the MEDT, the MAPF and the Ukrainian Wine Industry took place. All participants confirmed that, according to the Association Agreement, Ukraine has the right to use the above mentioned geographical indications of the European Union for the designation and presentation of certain comparable products originating from Ukraine during the transitional period, which ends on January 1, 2026. Participants emphasized that in the transitional period great attention should be paid to the approximation of the Ukrainian legislation to the EU norms and to the control over the production of authentic Ukrainian products, in particular over the one, which is now called "cognac of Ukraine".

The Ukrainian side reminded the EU side to consider supporting the Draft Law 9439 for ensuring the preservation of the domestic raw material base and the further functioning of the vine - wine industry, on the preservation and

development of authentic products that in future could replace the “Cognac of Ukraine”.

At this meeting the support to the draft law No. 9439 "On Amendments to the Law of Ukraine On State Regulation of Production and Circulation of Ethyl, Cognac and Fruit Alcohol, and Alcoholic Beverages," and the Law of Ukraine "On Grapes and Grape Wine" (regarding the use of domestic raw materials) by the EU side was discussed.

On the new definition of whisky:

The EU side commented that the new definition of whisky contradicts an existing Ukrainian definition, which is still in force, and is not compliant with the EU definition of whisky, and raises concerns for two main reasons:

1. The maximum ceiling of 45% alcohol by volume excludes from sale in Ukraine whiskies with a stronger alcoholic strength (i.e. premium cask strength whiskies);
2. The reference to cognac technology is incorrect or at least misleading, as cognac is made of wine and is a Geographical Indication, which name may not be used in Ukraine as of 2026. Whisky is made from cereals.

It is therefore doubtful whether some traditional whiskies produced in the European Union can be placed on the Ukrainian market after the applicability of the above-mentioned new definition. Moreover, the new definition appears not to be compatible with Ukraine’s commitments under the Association Agreement (rules on national treatment and Geographical Indications) and the WTO. Traders and operators, in both the EU and Ukraine, are obviously worried about the ambiguity and uncertainty created by this new definition and how trade flows will be affected. It was mentioned that a legislative solution should be found before 1 July 2019.

The Ukrainian side assured the EU side that active work for solving the mentioned issue is underway.

The Parties agreed that the next meeting of the Sub-Committee would take place in 2020 in Brussels.