



# Information on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

pursuant to Council Regulation (EU) no. 1151/2012

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## Preliminary note

Protection of indications of geographical origin at EU level was established in 1992 by the introduction of the Council Regulation (EEC) no. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. Within its scope of application, this system of protection takes precedence over protection granted to indications of geographical origin under national legislation and also over protection under bilateral agreements on geographical origin.

The EU system of protection is also available to indications of geographical origin from third countries (that is, countries that are not members of the EU), provided that they are also protected in the country of origin.

The current legal basis is Regulation (EU) no. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (EU Official Journal L 343 of 14 December 2012, p. 1, hereinafter referred to as "the Regulation").

Additional provisions or rules of implementation are stipulated in the Commission Delegated Regulation (EU) no. 664/2014 of 18 December 2013 (OJEU L 179 of 19 June 2014, p. 17) and the Commission Implementing Regulation (EU) no. 668/2014 of 13 June 2014 (OJEU L 179 of 19 June 2014, p. 36).

The **national examination procedure** is governed by **Sections 130 et seqq.** of the **Trade Mark Act** (*Markengesetz*) and **Sections 47 et seqq.** of the **Trade Mark Ordinance** (*Markenverordnung*).

This information leaflet aims at providing guidance to interested circles, particularly, on preparing and filing an application for the registration of a geographical indication or designation of origin in the register kept by the European Commission and, beyond that, an overview of the registration procedure and protection of registered names.

### I. What is protectable?

The Regulation only applies to certain agricultural products and foodstuffs, for example, fruit and vegetables, fish, meat and meat products, cheese, bread, pastry or beer. The classification in annex XI to the Implementing Regulation contains a comprehensive list. Special rules apply to wines and spirit drinks, which do not fall within the scope of the Regulation. This is also applicable to mineral waters.

Protection is provided for "**designations of origin**" (Art. 5(1) of the Regulation) and "**geographical indications**" (Art. 5(2) of the Regulation).

The indication or designation must be a name used to designate a product whose origin is in a specific place, a specific region or – only as an exception for designations of origin – in a specific country.

Certain traditional geographical or non-geographical names can also be considered as designations of origin or geographical indications. These are denominations that are otherwise no longer customary or indirect references to geographical indications, for example, "feta".

In both categories, the main requirement for protection is that there is a link between properties of the product in question and its production in the region of origin.

This link must be specifically close for products to qualify for the label "designation of origin": the quality or characteristics of a product must be essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing, and preparation must take place in the defined geographical area. This means that all stages of production must be performed in that area.

For a "geographical indication", it is sufficient that one of the stages of production, for example, processing, takes place in the defined geographical area and that a specific quality, reputation or other characteristic of the product results from that geographical origin.

**Protection is not available** for generic names that have become the common names of agricultural products or foodstuffs and are no longer considered to identify a product as originating from a particular geographical origin, for example, *Emmentaler* or *Pils*. Likewise, names conflicting with the name of a plant variety or an animal breed or with previously registered homonymous names and well-known trade marks can be excluded from registration (Art. 6 of the Regulation).

### II. Application requirements

An application for registration must be filed with the member state in whose sovereign territory the relevant geographical area is situated in order to obtain protection.

Applications for registration relating to a **geographical area in a third country** must be lodged either via the authorities of the third country concerned or directly **with the European Commission** (cf. Art. 49(5) of the Regulation).

In Germany, the German Patent and Trade Mark Office (DPMA) is in charge of receiving applications. It also provides the required **application form [WV 7007](#)** (*Antrag auf Eintragung einer geografischen Angabe/Ursprungsbezeichnung*).

Please note the following information regarding fields (2), (5), (7) and (8) of the application form:

#### 1. Applicant (field 2 of application form)

The application for registration can only be filed by an association of producers or processors of the product. In exceptional cases, an individual natural or legal person may also file an application, provided that the requirements of Article 49(1)(a) and (b) of the Regulation are met.

## 2. Type of agricultural product/foodstuff (field 5 of application form)

The type of agricultural product/foodstuff must be designated in accordance with annex XI to the Implementing Regulation.

## 3. Fee (field 7 of application form)

The fee to be paid with the application is **900 euros** (fee no. 336 100, cf. annex to Sec. 2(1) Patent Costs Act [*Patentkostengesetz*]).

## 4. Product specification (field 8 of application form)

The application must be accompanied by a product specification which contains the details specified in Article 7(1) of the Regulation. In this respect, the notes provided on page 3 of the application form concerning the content and structure of the product specification must be observed.

## III. Procedure after filing

The examination of the application takes place in a two-tier procedure: at the national level by the DPMA and at EU level by the European Commission.

Within the scope of the examination of the application, the **DPMA** asks expert bodies to issue opinions and **publishes the application** in part 7 of the Trade Mark Journal (*Markenblatt*) (Sec. 130(4) Trade Mark Act).

Any person having a legitimate interest, established or resident in the Federal Republic of Germany, may lodge an **opposition** to the application with the DPMA **within two months** after the publication (national opposition form [W 7010](#), *Nationaler Einspruch*). This opposition may only be based on the reasons set out in the first subparagraph, items (a) to (d) of Article 10(1) of the Regulation (see below).

The opposition fee to be paid within the opposition period is **120 euros** (fee no. 336 150, cf. annex to Sec. 2(1) Patent Costs Act).

If the final examination leads to the finding that the application meets the requirements of the Regulation, the DPMA takes a **favourable decision**, which will also be **published** in the Trade Mark Journal. If not, the application will be rejected.

If the specification was significantly amended after the publication of the application, these amendments are published together with the favourable decision.

**Appeals** against decisions taken by the DPMA may be lodged with the Federal Patent Court (*Bundespatentgericht*). The right to lodge an appeal against a decision granting an application for registration lies with the person having lodged an opposition to the application within the prescribed time limit or whose legitimate interests are affected by the favourable decision due to the amended details of the specification that were published (Sec. 133 Trade Mark Act).

When the favourable decision has become final, the application is forwarded to the Federal Ministry of Justice and Consumer Protection that transmits it to the European

Commission. In addition, the DPMA publishes the version of the specification on which the favourable decision is based.

The next step is a **scrutiny procedure at EU level** (Art. 50 of the Regulation). If the Commission deems the name to be eligible for protection, it publishes in the OJEU the so-called "single document" containing the main points of the specification (Art. 8(1)(c) of the Regulation) and the reference to the publication of the complete specification by the country of origin.

If no oppositions are lodged pursuant to Article 51 of the Regulation, the name will be entered in the register of protected designations of origin and protected geographical indications and published in the OJEU.

**Any other member state or third country** and all persons having a legitimate interest, established or resident in another member state or a third country, may lodge an **opposition** to the proposed registration (Art. 51(1) of the Regulation).

Oppositions can only be based on the **reasons** specified in Article 10(1) of the Regulation, namely:

- a) the conditions referred to in Article 5 of the Regulation for designations of origin or geographical indications or the requirements referred to in Article 7(1) of the Regulation for specifications are not complied with;
- b) the proposed name conflicts with the name of a plant variety or animal breed or with a registered name or well-known trade mark pursuant to Article 6(2), (3) or (4) of the Regulation;
- c) the registration of the proposed name would jeopardise the existence of an entirely or partly homonymous name or trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in Article 50(2)(a) of the Regulation; or
- d) the name whose registration is requested is a generic name.

If the reasoned statement of opposition is admissible, the Commission will invite the parties concerned, in a first step, to reach an agreement. If no agreement is reached, the Commission will take a decision, within the scope of a committee procedure, whether or not the name shall be entered in the register of protected names.

After conclusion of the procedure, the DPMA publishes the version of the product specification that provides the basis for the registration of a protected geographical indication or a protected designation of origin in the Trade Mark Journal.

Persons residing in Germany can lodge **oppositions to applications originating from other member states or third countries** with the German Patent and Trade Mark Office (Sec. 131(1) Trade Mark Act). This must be done within two months from the publication date of the applications in the OJEU. For these international oppositions, form [W 7011](#) (in German) shall be used. An opposition fee amounting to **120 euros** must be paid within the specified time limit (fee no. 336 200, cf. annex to Sec. 2(1) Patent Costs Act).

Pursuant to Article 53 of the Regulation, associations having a legitimate interest can apply for approval of **amendments to the product specification** of a registered name.

The Commission may **cancel a registration** on its own initiative or upon request of a member state or of any natural or legal person with a legitimate interest, if the conditions of the specification for an agricultural product or foodstuff covered by a protected name are no longer met or no product was put on the market under the protected designation of origin or the protected geographical indication in the past seven years (Art. 54 of the Regulation).

Requests under Articles 53 and 54 of the Regulation must also be filed at the DPMA. Forms [W 7008](#) and [W 7444](#) (both in German) are available for this purpose.

The fee for the request for amendment is **200 euros**, the fee for the request for cancellation is **120 euros** (fee no. 336 250 or 336 300, cf. annex to Sec. 2(1) Patent Costs Act).

**Note:**

Via the tab "Indications of geographical origin" in the official database [DPMAREGISTER](#), a list of all geographical indications of origin can be viewed. The list contains all indications of geographical origin in respect of which publications were included in part 7 of the Trade Mark Journal in the course of the examination procedure before the DPMA. The individual publications can also be displayed.

[DOOR](#) can be used to conduct a search for applications for protection undergoing the scrutiny procedure of the European Commission and for indications of origin from Germany and other countries already registered in the EU register of protected designations of origin and protected geographical indications.

## IV. Protection conferred by the registration

A name registered under the Regulation may be used by any operator marketing agricultural products or foodstuffs that comply with the corresponding specification. The EU symbols (logos) must appear on the labelling of products originating in the European Union and marketed under a registered name. The indications "protected designation of origin" or "protected geographical indication" or the respective abbreviations "PDO" or "PGI" may be used (Art. 12(3) of the Regulation).

Compliance with the specification is verified by control bodies of the member states. Any producer of a relevant product must adhere to the (fee-based) control system.

The use of protected names for comparable products having a different origin or other properties is not admissible. The use of a registered name for other products is likewise prohibited if by doing this the reputation of the protected name is exploited. Furthermore, the Regulation comprehensively protects registered names against any misuse, imitation or evocation even if the actual origin of the product is indicated or the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar, and any other misleading practices. Furthermore, protected names cannot become generic (Art. 13(1) and (2) of the Regulation).

The registration of indications of geographical origin does not affect the rights conferred by earlier trade marks acquired in good faith. However, the coexistence of the trade mark and of a designation of origin or geographical indication must be tolerated. In contrast, the later trade mark cannot be protected if the application has been filed in respect of comparable products and if the use of the trade mark would contravene Article 13 of the Regulation (Art. 14 of the Regulation).