



## **spiritsEUROPE’s Position and Amendment Proposal on the European Commission’s proposal for a Regulation on EU Geographical Indications (GIs) including spirit drinks**

### **INTRODUCTION**

Europe offers renowned rich and diverse food and drink products, such as the ca [250 GI spirit drinks](#). GI spirit drinks ensure in a unique way the protection of tradition and the ‘terroir’. They contribute to innovation whilst maintaining highest product and production standards in consumer safety and environmental protection. Also, as closely linked to specific places throughout the EU, GI spirits significantly contribute to local developments, also in rural areas which often are under the threat of brain drain, which the EU COM attempts to tackle in its [dedicated initiative](#) with an official Commission communication announced for the end of this year.

Yet, GI products – and GI spirit drinks – do not only have positive implications for Europe. Via GI products, European cultural and culinary heritage is promoted across the world, contributing significantly to national budgets. GI spirit drinks are inherently sustainable from an economic, social, and environmental perspective

Against this background, spiritsEUROPE and its members support to the European Commission objective to strengthen the geographical indications schemes for all agricultural sectors and to improve their contributions to sustainable production through the revised legislative framework and at the same time maintain a specific framework for the uniqueness of spirit drinks. Whilst being overall supportive to the European Commission’s approach, we would like to highlight our concerns regarding four specific areas which are set out in more detail below, including for instance amendment proposals for consideration in the ordinary legislative procedure.

These comments focus on:

- 1. Producer Groups**
- 2. Sustainability provisions**
- 3. GI protection**
- 4. The role of the European Intellectual Property Office – EUIPO**

spiritsEUROPE and its members look forward to support EU policy makers in defining ways “to strengthen the system of geographical indications... our cultural, gastronomic, and local heritage (...) across the world” (2019 mission letter from Commission President von der Leyen to Commissioner Wojciechowski).

## 1. PRODUCER GROUPS

Producer groups play an essential role in all aspects related to the wider management of spirits GIs, including the application process for the registration of GIs, as well as in the amendments of specifications, cancellation requests and action against fakes, to name a few tasks and responsibilities. spiritsEUROPE and its members welcome the European Commission's intention to empower producer groups and to equip them with the means to better identify and market the specific characteristics of their products (Recital 23).

Article 32 on producer groups sets out the details about what constitutes a producer group as well as their powers and responsibilities. The article further transfers the power to check that producer groups operate in a transparent and democratic manner, and that all producers of the product designated by the GI enjoy membership to that group (Art 32 (1)) to Member States.

Trade Associations, many of which are private, voluntary membership bodies, already act successfully as producer groups and apply appropriate criteria for membership. Trade associations apply criteria for membership meeting specific definitions and payment of a subscription as such membership is conditional upon meeting those requirements. Yet, all relevant producers will usually have the right to apply for membership. Some may not be eligible, and some may choose not to join.

- ➔ **The Commission should not interfere in the legal status and internal rules of governance of private entities.**
- ➔ **It should remain to be for the producer group to decide which powers it can exercise; not for Member States to set the parameters for the producer group's governance or the powers it can exercise. This would amount to unnecessary state interference in private entities and would not be consistent with empowerment.**
- ➔ **It is the eligible members who pay membership fees which control the producer group in most cases.**

Finally, whilst indeed many spirit drinks GI producers are SMEs (see recital 24), larger companies play an equally crucial role in the production and world-wide promotion of GI products. Some of the most successful GIs for spirit drinks are produced by large companies which often 'trail blaze' the market for SMEs. The contribution of all, small and large, towards promoting GI spirits and their excellent reputation globally, needs to be recognized by legislators. There is, however, an area of GI protection which would benefit from greater clarity: In some EU Member States, producer groups face difficulties being recognized as competent to take legal proceedings before the civil and/or criminal courts

to enforce GI rights on behalf of their members because the producer group itself does not trade in the market or own goodwill in the products. Even where such action can be taken in the name of the producer group only, the remedies available may be limited to injunctions, with no claim for damages or illegal profits available.

A clear and undisputed EU wide right for producer groups to take legal proceedings before the civil and/or criminal courts (as appropriate for the market), and to claim damages/illegal profits on behalf of its producer members, should be specifically provided. Whilst Article 32(2)(b) provides for "legal action", some could argue that could be fulfilled by allowing the producer group to file a complaint with enforcement authorities only but not necessarily to initiate action before the courts.

Proposal for a Regulation	
Recital 24	
Text proposed by the European Commission	spiritsEUROPE's amendment proposal
As producers of products bearing geographical indications are mostly small or medium size enterprises, they face competition from other operators along the food supply chain which can create unfair competition between local producers and those operating on a more extended scale. [...]	As producers of products bearing geographical indications are <b>often</b> <del>mostly</del> small or medium size enterprises, they <b>may</b> face competition from other operators along the food supply chain which can create unfair competition between local producers and those operating on a more extended scale. <b>However, larger enterprises also contribute to an important part to the GI community globally. [...]</b>
<i>Justification:</i> <i>Also larger players play an important role in the production and world-wide promotion of GI products. Some of the most successful GIs for spirit drinks are also produced by non-SME players who help promoting GI spirits and their excellent reputation globally, which needs to be recognized by legislators.</i>	

Proposal for a Regulation Article 32 – Paragraph 1	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
<p>(1) A producer group shall be set up on the initiative of interested stakeholders, including farmers, farm suppliers, intermediate processors and final processors, as specified by the national authorities and according to the nature of the product concerned. Member States shall verify that the producer group operates in a transparent and democratic manner and that all producers of the product designated by the geographical indication enjoy right of membership in the group.</p> <p>Member States may provide that public officials, and other stakeholders such as consumer groups, retailers and suppliers, also participate in the works of the producer group.</p>	<p>(1) A producer group shall be set up on the initiative of interested stakeholders, including farmers, farm suppliers, intermediate processors and final processors, <b>as specified by the national authorities and according to the nature of the product concerned.</b> <del>in accordance with national laws and according to the nature of the product concerned.</del> <del>Member States shall verify that the producer group operates in a transparent and democratic manner and that all producers of the product designated by the geographical indication enjoy right for of membership in the group.</del> <del>Member States may provide that public officials, and other stakeholders such as consumer groups, retailers and suppliers, also participate in the works of the producer group.</del></p>
<p><i>Justification:</i></p> <p><i>The deleted section is inappropriate and inconsistent with the rights of some types of producer groups. Many trade associations are private voluntary bodies set up as limited companies. This could interfere in the legal status and internal rules of governance of private entities. It is normal for producer members who pay membership fees to control the producer group. Relevant producers will usually have the right to apply but not necessarily a right to join unless they meet the agreed criteria for membership. Many privately funded trade bodies would not expect to have public officials and consumer groups participating directly in the work of the producer group and the involvement of retailers and suppliers in the work of some types of producer groups is inconsistent with their purpose and raises competition concerns.</i></p>	

Proposal for a Regulation Article 32 on Producer Groups – Paragraph 2	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
<p>(2) A producer group may exercise in particular the following powers and responsibilities:</p> <p>(a) develop the product specification and manage internal controls that ensure compliance of production steps of the product designated by the geographical indication with the said specification;</p> <p>(b) take legal action to ensure protection of the geographical indication and of the intellectual property rights that are directly connected with it.</p>	<p>(2) A producer group may exercise in particular the following <b>non-exhaustive</b> powers and responsibilities:</p> <p>(a) develop the product specification and manage internal controls that ensure compliance of production steps of the product designated by the geographical indication with the said specification;</p> <p>(b) take legal action <b>including but not limited to, action before the civil and criminal courts</b>, to ensure protection of the geographical indication and of the intellectual property rights that are directly connected with it; <b>and to claim damages</b></p>
<p><i>Justification:</i></p> <p><i>Introduction of the word “non-exhaustive” helps emphasise these powers are illustrative of what’s possible but that the powers of a producer group are not limited to only those powers.</i></p> <p><i>In some EU member states, producer groups have difficulties taking legal proceedings before the courts to enforce GI rights on behalf of their members. Even where such action can be taken in the name of the producer group only, the remedies available may be limited to injunctions, with no claim for damages or illegal profits available. An EU wide right for producer groups to take legal proceedings before the courts, and to claim damages should be specifically provided. Whilst article 32(2)(b) provides for “legal action”, some could argue that would be fulfilled by allowing the producer group to file a complaint with enforcement authorities only but not necessarily to initiate action before the courts.</i></p>	

**The impact on non-EU producer groups**

In its proposal for a Regulation, the European Commission distinguishes between producer groups and recognized producer groups, the latter introduced in Article 7(f). However, the concept of a ‘recognised producer group’ only applies to groups established within the European Union, which has significant, undesired implications for non-EU producer groups, as set out in more detail below.

- ➔ **Propose to complete the EU COM’s proposal for a definition of ‘recognized producer groups’ (Article 7(f)) with the necessary additions to ensure equal rights and obligations to EU and third country GIs as recognized by the EU (e.g., Article 24(2))**

<p><b>Proposal for a Regulation</b> <b>Article 2 on Definitions – Paragraph a</b></p>	
<b>Text proposed by the European Commission</b>	<b>spiritsEUROPE amendment proposal</b>
(1) For the purposes of this Title the following definitions shall apply: (a) ‘producer group’ means any association, irrespective of its legal form, mainly composed of producers or processors of the same product;	(1) For the purposes of this Title the following definitions shall apply: (a) ‘producer group’ means any association <del>irrespective of its legal form, mainly composed of producers or processors of the same product;</del> having legal personality and <b>which represents producers of a geographical indication</b>
<i>Justification:</i>	
<i>“Producer group” should be defined broadly.</i>	
<p><b>Proposal for a Regulation</b> <b>Article 8 on Applicant – Paragraph 2</b></p>	
<b>Text proposed by the European Commission</b>	<b>spiritsEUROPE amendment proposal</b>
(2) An authority designated by a Member State may be deemed to be an applicant producer group for the purposes of this Title, with respect to geographical indications of a spirit drink, if it is not feasible for the producers concerned to form a group by reason of their number, geographical location or organisational characteristics. In such case, the application referred to in Article 9(2) shall state those reasons.	(2) An authority designated by a Member State <b>or third country</b> may be deemed to be an applicant producer group for the purposes of this Title, with respect to geographical indications of a spirit drink, if it is not feasible for the producers concerned to form a group by reason of their number, geographical location or organisational characteristics. In such case, the application referred to in Article 9(2) shall state those reasons.
<i>Justification:</i>	
<i>There is no reason this should be restricted to Member States. The amendment is required to ensure there is no discrimination against GIs from third countries registered in the EU.</i>	
<p><b>Proposal for a Regulation</b> <b>Article 24 on Extracts from the Union register of geographical indications – Paragraph 2</b></p>	
<b>Text proposed by the European Commission</b>	<b>spiritsEUROPE amendment proposal</b>
(2) Where a producer group has been recognised by the national authorities in accordance with Article 33, that group shall be identified as the rights' holder of the geographical indication in the Union register of geographical indications and in the official extract referred to in paragraph (1).	(2) Where a producer group has been recognised by the national authorities in accordance with Article 33 <b>or by third country national authority</b> , that group shall be identified as the rights' holder of the geographical indication in the Union register of geographical indications and in the official extract referred to in paragraph (1).
<i>Justification:</i>	
<i>This provision will only allow ‘recognised producer groups’, which must be groups established in the EU under the definition in article 33, to be capable of identification in the GI register. Third country groups would not benefit from the rights outlined by this provision. That being the case, those consulting the register (individuals, enforcement authorities etc) will not be able to quickly identify the relevant producer group in many cases, which is both unhelpful and discriminatory.</i>	

Proposal for a Regulation Article 25 on Amendments to a product specification – Paragraph 1 and 7	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
(7) Applications for Union amendments submitted by a third country or by producers in a third country shall contain proof that the requested amendment complies with the laws on the protection of geographical indications in force in that third country.  [...]	(7) Applications for Union amendments submitted by a third country or by producer <b>groups</b> in a third country shall contain proof that the requested amendment complies with the laws on the protection of geographical indications in force in that third country.  [...]
<i>Justification:</i>	
<i>The article would benefit from the streamlining of language and terminology used. Where paragraph 1 refers to 'producer groups', paragraph 7 refers to 'producers'. Both should refer to 'producer groups'.</i>	

Proposal for a Regulation Article 27 on the Protection of geographical indications – Paragraph 5	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
(5) The recognised group of producers or any operator that is entitled to use the protected designation of origin or protected geographical indication shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and are in breach of paragraph (1).	(5) The <del>recognised group of producers</del> <b>producer group</b> or any operator that is entitled to use the protected designation of origin or protected geographical indication shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and are in breach of paragraph (1).
<i>Justification:</i>	
<i>Alignment of terminology as Article 2 defines producer group and not group of producers. Any relevant producer group should be able to take action to prevent the transit of fake goods.</i>	

Proposal for a Regulation Article 33 - Recognised producer groups	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
(1) Upon a request of producer groups fulfilling the conditions of paragraph 3, Member States shall designate, in accordance with their national law, one producer group as recognised producer group for each geographical indication originating in their territory that is registered or is subject to an application for registration or for product names that are a potential subject for application for registration.	(1) Upon a request of producer groups fulfilling the conditions of paragraph 3, Member States shall designate, <b>and authorities from a third country may designate</b> , in accordance with their national law, one producer group as recognised producer group for each geographical indication originating in their territory that is registered or is subject to an application for registration or for product names that are a potential subject for application for registration.  <b>When the producer group is designated as 'recognized producer group' by Member States or authorities from a third country, the latter is the sole group to act on behalf of all producers with all competences in the articles 25, 27, 32 and in the present article.</b>
<i>Justification:</i>	
<i>These additions remove discrimination against third country producer groups which breaches article 3 of WTO TRIPS. However, note the required difference between "shall designate" and "may designate" for Member States and third countries.</i>	

<p>(2) A producer group may be designated as recognised producer group subject to a prior agreement concluded between at least two-thirds of the producers of the product bearing a geographical indication, accounting for at least two-thirds of the production of that product in the geographical area referred to in the product specification. As an exception, an authority, as referred to in Article 8(2), and a single producer, as referred to in Article 8(3), shall be deemed to be a recognised producer group.</p>	<p>(2) A producer group may be designated as recognised producer group <del>subject to a prior agreement concluded between at least two-thirds of the producers of the product bearing a geographical indication,</del> if accounting for at least two-thirds of the production of that product in the geographical area referred to in the product specification. As an exception, an authority, as referred to in Article 8(2), and a single producer, as referred to in Article 8(3), shall be deemed to be a recognised producer group.</p>
<p style="text-align: center;"><u>Justification:</u></p> <p><i>If the producer group can demonstrate it represents two thirds of production, it seems unnecessary and burdensome for the producer group to need some sort of separate agreement with its members. It is imperative that confirmation is given that the provisions of Article 33(2) apply on an all-island basis to the island of Ireland. Irish Whiskey, Irish Cream and Irish Poitin/Poteen are unique geographic indications spanning two jurisdictions one within EU and one outside the EU.</i></p>	
<p>(3) (a) to liaise with intellectual property enforcement and anti-counterfeit bodies and participate in intellectual property enforcement networks as the geographical indication right holder;</p>	<p>(3) (a) to liaise with intellectual property enforcement <del>and anti-counterfeit</del> bodies and participate in intellectual property enforcement networks as the geographical indication right holder;</p>
<p style="text-align: center;"><u>Justification:</u></p> <p><i>The article should restrict itself to public enforcement bodies. The addition of “anti-counterfeit bodies” could cover private organisations such as TRACIT and the provisions should not interfere in whether one private body engages with another in this area.</i></p>	
<p>(4) The powers and responsibilities referred to in paragraph 2 shall be subject to a prior agreement concluded between at least two-thirds of the producers of the product designated by a geographical indication, accounting for at least two-thirds of the production of that product in the geographical area referred to in the product specification.</p>	<p>(4) <del>The powers and responsibilities referred to in paragraph 2 shall be subject to a prior agreement concluded between at least two-thirds of the producers of the product designated by a geographical indication, accounting for at least two-thirds of the production of that product in the geographical area referred to in the product specification.</del></p>
<p style="text-align: center;"><u>Justification:</u></p> <p><i>If the producer group can demonstrate it represents two thirds of production, it seems unnecessary and burdensome for the producer group to need some sort of separate agreement with its members.</i></p>	
<p>(5) Member States shall carry out checks in order to ensure that the conditions laid down in paragraph 2 are complied with. Where the competent national authorities find that such conditions have not been complied with, Member States shall annul the decision on the recognition of the producer group.</p>	<p>(5) Member States shall carry out checks in order to ensure that the conditions laid down in paragraph 2 are complied with. <del>Where the competent national authorities find that such conditions have not been complied with, Member States shall annul the decision on the recognition of the producer group.</del></p>
<p style="text-align: center;"><u>Justification:</u></p> <p><i>A reading of paragraph 2 and 3 (as amended) requires, in effect, for the producer group to demonstrate it represents two thirds of production.</i></p>	



## 2. SUSTAINABILITY PROVISIONS

spiritsEUROPE and its members are highly committed to deliver on the European Green Deal and its objectives. Sustainability has been and remains to be one of the key drivers for our sector and considerable investments to increase our product's overall sustainability performance, be it from an environmental, social or economic perspective, are delivering results (see our Farm2Glass brochure [here](#), our sector's position on the EU's Farm2Fork strategy). Against this background, we very much appreciate the European Commission's efforts to support that GIs will also in the future play their part in terms of the European Union's sustainability agenda. To make sound policy, policy makers need to integrate and recognize ongoing sustainability efforts across policy areas and to take account of ongoing legislative initiatives towards an increased level of sustainability, such as a.o. the revision of the Packaging and Packaging Waste Directive, Sustainable Food Systems, the Code of Conduct on Responsible Business and Marketing – to name a few.

Based on centuries of skills and experience, spiritsEUROPE and its members highlight that sustainable business practice can best be assessed at local level by local people - in line with the principle of subsidiarity. Further, sustainability measure imposed by governments on EU and/or national level often miss the objective to be achieved – sustainable practices are defined by local environments; there is no one-size-fits-all approach and businesses need the flexibility for R&D activities to explore various means to improve their products' individual sustainability performance. Legally mandated criteria will burden SMEs with no guarantee for improved sustainability performance, which would well be achieved in a legal framework that leaves room to explore in a voluntary manner – as proposed by the European Commission in Article 12 on Sustainability undertakings.

- ➔ **We stress the need to integrate and acknowledge ongoing sustainability efforts across policy areas e.g., the revision of the Packaging and Packaging Waste Directive, Sustainable Food Systems and the Code of Conduct on Responsible Business and Marketing.**
- ➔ **We call on policy makers to maintain and strengthen the European Commission's approach that sustainability efforts need to take account of local conditions and remain voluntary.**

Proposal for a Regulation	
Recital 12 on Sustainability undertakings – Paragraphs 1, 4 and 5	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
(1) A producer group may agree on sustainability undertakings to be adhered to in the production of the product designated by a geographical indication. Such undertakings shall aim to apply a sustainability standard higher than mandated by Union or national law and go beyond good practice in significant respects in terms of social, environmental or economic undertakings. Such undertakings shall be specific, shall take account of existing sustainable practices employed for products designated by geographical indications, and may refer to existing sustainability schemes.	(1) A producer group may agree on sustainability undertakings to be adhered to in the production of the product designated by a geographical indication. Such undertakings <del>shall</del> <b>may</b> aim to apply a sustainability standard higher than mandated by Union or national law and go beyond good practice in significant respects in terms of social, environmental or economic undertakings. Such undertakings shall be specific, shall take account of existing sustainable practices employed for products designated by geographical indications, and may refer to existing sustainability schemes.
(2) The sustainability undertakings referred to in paragraph (1) shall be included in the product specification.	(2) The sustainability undertakings referred to in paragraph (1) <del>shall</del> <b>may</b> be included in the product specification.
(4) The Commission shall be empowered to adopt delegated acts in accordance with Article 84 defining sustainability standards in different sectors and laying down criteria for the recognition of existing sustainability standards to which producers of products designated by geographical indications may adhere.	<del>(4) The Commission shall be empowered to adopt delegated acts in accordance with Article 84 defining sustainability standards in different sectors and laying down criteria for the recognition of existing sustainability standards to which producers of products designated by geographical indications may adhere.</del>
(5) The Commission may adopt implementing acts defining a harmonised presentation of sustainability undertakings. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 53(2).	<del>(5) The Commission may adopt implementing acts defining a harmonised presentation of sustainability undertakings. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 53(2).</del>

*Justification for (2), (4) and (5):*

*Any sustainability undertakings to be adhered to in the production of a GI spirit drink must remain voluntary, as well as the inclusion of such undertakings in the product specification— any prescriptive approach by the EU legislators may endanger success achieved on a voluntary basis targeted to the specificities of GIs and their very specific, individual context.*

*To avoid inconsistencies with the fact that sustainability undertakings shall remain on a voluntary basis, the European Commission shall not be empowered to adopt delegated and/or implementing acts defining sustainability standards and undertakings.*

Further, [Article 32\(2\)\(c\)](#) also refers to the possibility of an agreement outside the Product Specification and if there is such an agreement it should be intimated to the Commission when applying for registration. It is not clear why the Commission should take an interest in an agreement outside the Product Specification. Furthermore, there is a contradiction between the possibility of a sustainability undertaking outside the product specification and the wording in [Article 12\(2\)](#) which states that sustainability undertakings **shall** be included the product specification. Sustainability undertakings **may** be included in the product specification or not, according to the will of the producer group.

### 3. GI PROTECTION

As GI products, such as spirits, are of high value, they naturally are at risk of being subject to fraudulent activities. **spiritsEUROPE and its members very much welcome the strengthening of the existing legal basis.** In particular, the provisions to fight against infringements on the Internet (domain names, online sales) and the clarifications concerning the false or misleading indication on any documentation, website, packaging, etc provide added value ([Article 27\(1\)\(c\) and \(3\)](#)). Also, the addition of the notion of dilution and weakening of the reputation of a GI ([Article 27\(1\)\(a\)](#)) is most helpful to protect GI spirits effectively.

Regarding domain names, we consider that "new gTLDs" that include or evoke a GI (e.g. ".[GI]" domain names) should be the subject of particular attention and that the Commission should pursue the efforts with ICANN and its partners in order to integrate GIs as a right that can be invoked to fight against litigious gTLDs . Also, a provision on the e-commerce platforms' liability for the removal of references, advertisements of products infringing GIs and for the transmission of infringer's information to the right holder could be considered by the Commission, in line with the Single Market for Digital Services (DSA) for an effective implementation of GI protection online.

The proposal for a regulation specifies in Recital 9 and Article 4 that it covers geographical indications protecting the names of wines, spirit drinks and agricultural products having "characteristics, attributes or reputation linked to their place of production". We propose the harmonisation of this definition in line with the usual wording of the WTO TRIPS agreements or texts of the Lisbon System relating to geographical indications to avoid a definition which might be less advantageous for GIs.

Proposal for a Regulation Recital 9 and Article 4	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
[...] characteristics, attributes or reputation linked to their place of production.	[...] <del>characteristics, attributes or reputation</del> <b>quality, reputation or other characteristic</b> linked to their place of production.

The addition of the definition of the **concept of 'evocation'** ([Article 27\(2\)](#)), is assessed to be less helpful; the concept is complex in practice and existing case law<sup>1</sup> very well establishes which practice constitutes evocation (or not).

➔ **We therefore propose to withdraw the attempted definition of the concept of evocation.**

<sup>1</sup> The test on evocation is set out in paragraph 56 of CJEU judgment C44-17



<b>Proposal for a Regulation</b> <b>Article 27 on the Protection of geographical indications – Paragraphs 1(b) and 2</b>	
<b>Text proposed by the European Commission</b>	<b>spiritsEUROPE amendment proposal</b>
<p>(1) (a) any direct or indirect commercial use of the geographical indication in respect of products not covered by the registration, where those products are comparable to the products registered under that name or where use of a name exploits, weakens, dilutes, or is detrimental to the reputation of, the protected name;</p>	<p>(1) (a) any direct or indirect commercial use of the geographical indication in respect of products not covered by the registration, where those products are comparable to the products registered under that name or where use of a name exploits, weakens, dilutes, or is detrimental to the reputation of, the <del>protected name</del> <b>geographical indication</b>;</p>
<p>(1) (b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar.</p>	<p>(1) (b) any misuse, <del>or</del> imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar.</p>
<p>(1) (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material, documents or information provided on websites relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;</p>	<p>(1) (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the <del>inner or outer packaging, advertising material, documents</del> <b>description, presentation and labelling as defined in Article 4 of Regulation 2019/787</b> or information provided on websites relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;</p>
<p>(2) For the purposes of paragraph (1), point (b), the evocation of a geographical indication shall arise, in particular, where a term, sign, or other labelling or packaging device presents a direct and clear link with the product covered by the registered geographical indication in the mind of the reasonably circumspect consumer, thereby exploiting, weakening, diluting or being detrimental to the reputation of the registered name.</p>	<p>(2) <del>For the purposes of paragraph (1), point (b), the evocation of a geographical indication shall arise, in particular, where a term, sign, or other labelling or packaging device presents a direct and clear link with the product covered by the registered geographical indication in the mind of the reasonably circumspect consumer, thereby exploiting, weakening, diluting or being detrimental to the reputation of the registered name.</del></p>
<p style="text-align: center;"><i>Justification:</i></p> <p>Amendment proposals reflect alignment of language across this draft Regulation as well as alignment to other pieces of relevant EU legislation, notably the spirit drinks Regulation EU 2019/787. Further, the notion of evocation is very important for GIs but it is complex and currently reflected in developing case law which already establishes the parameters of the concept. A legislative definition which does not reflect that complexity risks freezing the concept in an incomplete or flawed state. The protection provided is too important to risk in this way.</p> <p>The definition proposed includes the words “presents a clear and direct link”. This does not accurately reflect the test set out in, for example, paragraph 56 of CJEU judgment C44-17. The test set out in that paragraph contains a number of elements not reflected in this proposed definition. Paragraph 53 of the same judgment refers to the need for the link with the GI to be “sufficiently clear and direct” which is not the same as that proposed – what is “sufficient” will depend on the circumstances of each case. Furthermore, the proposed definition appears to limit evocation to only where the use exploits, weakens, dilutes or is detrimental to the reputation of the GI name. This limitation is not part of the test set out in paragraph 56 of C44-17 or indeed article 21(b) of 2019/787.</p> <p>The reference to protection against evocation in (1) (b) should remain, of course, but the attempted definition of the concept of evocation should be withdrawn.</p>	

As concerns the **use of GI spirits as ingredients**, the proposal for a Regulation incorporates provisions of Article 21(2) of Regulation EU 2019/787 (the Spirit Drinks Regulation) on the protection of GI spirits and attempts to strengthen them in **Article 27(1)** on the Protection of geographical indications of the proposal for a Regulation. **Unfortunately, Article 27 omits to clarify the protection of GIs when used as ingredients.**

In addition, **Article 28** provides a framework for the **use of GI products as ingredients in processed products** and offers some levels of protection against unfair practices, the weakening or dilution of reputation. However, unlike as set out in the Spirit Drinks Regulation, the notions of direct and indirect commercial uses, misuse, evocation, imitation, translation (etc.) no longer exist in connection with the use of a GI as an ingredient.

➔ **We request that consistency with the Spirit Drinks regulation and subsequent amending delegated legislation is integrated in the proposal for a regulation to avoid any decrease of the level of protection for spirit drinks.**

<b>Proposal for a Regulation Article 27 on the Protection of geographical indications – Paragraphs 1(a) and (b)</b>	
<b>Text proposed by the European Commission</b>	<b>spiritsEUROPE amendment proposal</b>
(1) (a) any direct or indirect commercial use of the geographical indication in respect of products not covered by the registration, where those products are comparable to the products registered under that name or where use of a name exploits, weakens, dilutes, or is detrimental to the reputation of, the protected name	1 (a) any direct or indirect commercial use of the geographical indication in respect of products not covered by the registration, where those products are comparable to the products registered under that name or where use of a name exploits, weakens, dilutes, or is detrimental to the reputation of, the protected name, <b>including where those products are used as an ingredient</b> in line with Regulation (EU) 2019/787.
(1) (b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar.	(1) (b) any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ or similar, <b>including where those products are used as an ingredient</b> in line with Regulation (EU) 2019/787.
<i>Justification:</i>	
We propose to add the clarification “ <i>including where those products are used as an ingredient</i> ” in article 27 of the proposal for a regulation, in line with the article 21. 2 (a) and (b) of Regulation (EU) 2019/787, to maintain the highest level of protection.	

The prohibition of **using a GI in the “food name”** of a product, except when in agreement of the representative group of producers, is a requirement introduced by **Article 28(2)**. Yet, **the term “food name” remains undefined and we wonder whether it’s a new concept or an inappropriate wording for concepts already defined in EU Law such as “legal name”**. Furthermore, this provision is in clear contrast to provisions on allusions, mixtures and compound terms and blending of the Spirit Drinks Regulation, where it is provided that a GI spirit drink can be used in combination with other foodstuffs (as allusions and compound terms).

➔ **We propose clarifications, either by defining the term “food name” or by referring to a concept already defined in EU Law and the alignment of the article with the provisions of the Spirit Drinks Regulation.**

Proposal for a Regulation Article 2 on Definitions – Paragraph 1 – new (j)	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
	(j) ‘food name’ (followed by definition - pending)
<p style="text-align: center;"><u>Justification:</u></p> <p>The term “food name” remains undefined in Article 2 on Definitions yet the concept is referred to in Article 28(2). We ask the co-legislator to either define “food name” or refer to a concept already defined in EU Law, to understand the scope of the article 28 (2).</p>	

Proposal for a Regulation Article 28 on Ingredients in processed products – Paragraph 1 and new 2(a)	
Text proposed by the European Commission	spiritsEUROPE amendment proposal
(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	(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 <b>and complies with the applicable provisions of Regulation (EU) 2019/787 in respect of spirit drinks.</b>
(2) The geographical indication designating a product ingredient shall not be used in the food name of the related processed product, except in cases of an agreement with a producer group representing two thirds of the producers.	(2) <del>The geographical indication designating a product ingredient shall not be used in the food name of the related processed product, except in cases of an agreement with a producer group representing two thirds of the producers.</del>
<p style="text-align: center;"><u>Justifications (1) and (2):</u></p> <p><i>This provision is in clear contrast to provisions on allusions, mixtures and compound terms and blending of the Spirit Drinks Regulation (EU 2019/787), where it is provided that a GI spirit drink can be used in combination with other foodstuffs (as allusions and compound terms).</i></p> <p><i>The proposed amendment aligns the article with the applicable provisions of the Spirit Drinks Regulation (EU 2019/787). Moreover, this new requirement would arise the question of the assessment of criteria to grant such an agreement to avoid any discrimination. We thus propose the withdrawal of this new requirement or clarification about its implementation.</i></p>	

Proposal for a Regulation Article 37 – Union Symbols, indications and abbreviations – paragraph (6) and (10)	
Text proposed by the European Commission	spiritsEUROPE’s amendment proposal
(6) Indications, abbreviations and Union symbols may be used in the labelling and advertising materials of processed products when the geographical indication refers to an ingredient thereof. In that case, the indication, abbreviation or Union symbol shall be placed next to the name of the ingredient that is clearly identified as an ingredient. The Union symbol shall not be placed in association with the name of the food within the meaning of Article 17 of Regulation (EU) No 1169/2011 or in a manner that suggests to consumer that the processed product rather than the ingredient is the object of registration.	(6) Indications, abbreviations and Union symbols may be used in the labelling and advertising materials of processed products when the geographical indication refers to an ingredient thereof. In that case, the indication, abbreviation or Union symbol shall be placed next to the name of the ingredient that is clearly identified as an ingredient. The Union symbol shall not be placed in association with the name of the food within the meaning of Article 17 of Regulation (EU) No 1169/2011 or in a manner that suggests to consumer that the processed product rather than the ingredient is the object of registration.

	<b>The Union symbol shall not be used in a manner likely to constitute a misappropriation of the reputation of the geographical indication or likely to mislead consumers and shall be used in respect of the labelling requirements of Regulation (EU) 787/2019 and Regulation (EU) 1308/2013</b>
(10) The following may also appear on the labelling: (a) depictions of the geographical area of origin referred to in the product specification; and (b) text, graphics or symbols referring to the Member State and the region in which that geographical area of origin is located	<del>(10) The following may also appear on the labelling: (a) depictions of the geographical area of origin referred to in the product specification; and (b) text, graphics or symbols referring to the Member State and the region in which that geographical area of origin is located</del>
<i>Justifications (6) and (10):</i>	
<i>We propose to the Commission to specify the conditions of use of the logo on the labelling of products when the GI is used as an ingredient, or at least to ensure that the use of indications, abbreviations or the GI logo next to the GI on the label does not exploit/dilute its reputation. The proposal to delete paragraph 10 is because GIs do not need to be given permission to perform the tasks described in the paragraph.</i>	

**As set out in Article 45 Certificates of Authorisation to produce**, a producer whose GI product complies with the applicable product specifications, is entitled to an official certificate of eligibility to produce the GI product. This proof of certification is required when dealing with (enforcement) authorities and customs, or when conducting business. While this approach works in some Member States for some products, there is not a single mechanism to verify that a product can bear a GI. Options, such as public lists of producers or list of authorized brands or list of competent contact control points to answer any query for example, would be perfectly appropriate for some countries. Yet, there is currently no “certificate of authorisation to produce” in all countries (EU or non-EU), highlighting the risks of inconsistencies between countries and the need for flexibility. Of course, for some spirits there is no single producer if the verification model used is to authenticate different stages of production at different facilities owned by different companies. Furthermore, it’s not only a producer issue but also a brand owner issue as it is the brand owner who is usually responsible for placing the product on the market. Further, it remains unclear what constitutes a certificate and if digital means would be acknowledged in all circumstances.

<b>Proposal for a Regulation Article 45 on certificates of authorization to produce</b>	
<b>Text proposed by the European Commission</b>	<b>spiritsEUROPE amendment proposal</b>
(1) A producer whose product, following the verification of compliance referred to in Article 39 is found to comply with the product specification of a geographical indication protected in accordance with this Regulation shall be entitled to an official certificate, or other proof of certification, of eligibility to produce the product designated by the geographical indication concerned in respect of the production steps performed by the said producer.	(1) A producer <b>or brand owner</b> whose product, following the verification of compliance referred to in Article 39 is found to comply with the product specification of a geographical indication protected in accordance with this Regulation shall be entitled to <del>an official certificate, or other proof of</del> <b>verification certification, including by digital means</b> , of eligibility to produce <b>or market</b> the product designated by the geographical indication concerned <del>in respect of the production steps performed by the said producer.</del>
<i>Justification:</i>	
<i>Some GI products require more than one production step and therefore may involve several producers. Issuing one single certificate for one producer therefore will only be workable in practice for some. Digital tools such as publicly available databases of verified products also need to be recognized for the purpose of identifying lawful producers/ entities performing production steps for the creating of GI spirits or responsible for placing verified products on the market.</i>	

#### 4. ROLE OF THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE (EUIPO)

SpiritsEUROPE welcomes the Commission's objective to modernize the management and administration of GIs, which will increase the attractiveness of GI products for operators. The delegation of specific, limited and strictly defined tasks to the European Union Intellectual Property Office (EUIPO) can help in this attempt, yet SpiritsEUROPE urges that the European Commission remains in power of key decisions and should oversee co-decision procedures and be responsible for ensuring that the specificities of spirit drinks are fully considered and respected. DG AGRI, who drafted the Spirit Drinks Regulations and who is looking after our sector for years, needs to remain the entity responsible for GI spirit drinks.

We note with concern that the seemingly unlimited list of responsibilities that the EU COM can delegate to EUIPO via the adoption of Delegated Acts (see Articles 17(5), 19(10), 23(7), 25(10), 26(6), 46 and 47), which contrasts with the statement of intent in Recital 39 according to which the outsourcing to EUIPO would be "*partial*" and "*the Commission would remain responsible for registration, amendment and cancellation*". **Also**, the limited list of "*non-essential*" tasks for EUIPO in recital 56 does not cover the entire scope of substantive competences that can be delegated to EUIPO according to the relevant provisions (for instance in Article 34 on domain names, or Article 35 on conflicting trademarks).

SpiritsEUROPE therefore stresses that – via dedicated Articles, not merely recitals –

- ➔ **the powers and tasks that the EU COM may delegate to EUIPO need to be clearly defined and specified in the form of an exhaustive positive list and may include only non-essential tasks. Such a listing should also include powers that the European Commission cannot delegate.**
- ➔ **the European Commission maintains the exclusive competence and responsibility for the registrations of GIs, at least (1) acceptance of applications and their publication; (2) oppositions; (3) cancellations and (4) amendments to the technical files.**
- ➔ **the limited list of "*non-essential*" tasks for EUIPO in recital 56 needs to be specifically reflected in the relevant articles.**