

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

8205/22

COM(2022) 174

Proposal for a Regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754

Submitted by the Department for Business, Energy and Industrial Strategy on 27/06/2022.

SUBJECT MATTER

1. On 13 April 2022 the European Commission published its proposed Regulation for the provision of a new sui generis Geographical Indication (GI) scheme for craft and industrial products, also traditionally known as non-agricultural geographical indications (NAGIs).
2. A GI is a sign used to indicate that a product has a specific geographical origin and possesses a certain reputation or qualities due to that place of origin. There are existing sui generis EU GI schemes for wine, spirits and agri-food products but this is the first time the Commission has published a proposal for NAGIs and exercised competency in this area. Examples of NAGIs include handicraft and artisanal products such as Murano glass or Donegal Tweed.
3. In the UK, NAGIs are protected by the trade mark system. This is a common way to provide protection with similar systems operating in the US, Australia, and Canada. There are some differences between the protection provided through trade marks and GIs, including whether the right requires renewal to remain in force, and how enforcement is provided. While the EU is a strong protagonist for GI protection, NAGIs are currently protected across the Union at Member State level through domestic trade mark systems, sui generis GI schemes or a combination of these.
4. Under these draft proposals, the measures would provide a harmonised approach, bringing in a new, dedicated unitary EU NAGI scheme (including registration, verification and enforcement system) and extend the eligibility of Union-wide GI protection to craft and industrial products.

5. It is not yet clear whether and how this measure, if implemented, would apply to Northern Ireland and how it would interact with the Northern Ireland Protocol. The current draft legislation is silent on this point. However, at a recent meeting of the Joint Consultative Working Group, the EU informed the UK of its view that, if adopted, the legislation could fall under Article 13(4) of the Protocol as a new Act which would not amend or replace any of the Acts listed in the Annexes to the Protocol. It would instead work in parallel with the existing GI protection schemes for wines, spirit drinks, and other agri-food products which apply in the UK in respect of Northern Ireland in accordance with the Protocol. The proposal cannot apply in Northern Ireland unless both parties within the Joint Committee - the UK and the EU - agree to add the legislation to the relevant Annex to the Protocol. Though there are further steps set out where agreement cannot be reached.

SCRUTINY HISTORY

6. Whilst the EU has been assessing the feasibility of introducing of a sui generis non-agricultural GI scheme for over a decade, this is the first time the Commission has published a legislative proposal for craft and industrial products, therefore there is no scrutiny history.
7. Regarding the amendments being made by this proposal:
 - 2017/1001: EU document COM(16)702 was a codification proposal and exempt from scrutiny.
 - 2019/1753: scrutinised as EU document 11515/18, COM(18)365.
 - 2019/1754: scrutinised as EU document 11501/18, COM(18)350.

MINISTERIAL RESPONSIBILITY

8. The Secretary of State for the Department for Business, Energy and Industrial Strategy is responsible for intellectual property policy, including trade marks and non-agricultural GIs.
9. The Secretary of State for the Department for Environment, Food and Rural Affairs has responsibility for GI policy which relates to wines, spirits and agri-food products.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. Under Article 5(4) and Annex 2 of the Protocol, Northern Ireland remains in scope of the current unitary EU GI schemes for wines, spirits and agri-food and GIs protected under these EU schemes are in force within Northern Ireland.
11. If the proposal is passed in its current form, it is not yet clear whether and how a new sui generis GI scheme for craft and industrial products would apply in Northern Ireland. However, as outlined above, the EU has informed the UK of its

view that, if adopted, the legislation would fall under Article 13(4). The proposal cannot apply in Northern Ireland unless both parties within the Joint Committee - the UK and the EU - agree to add the legislation to the relevant Annex to the Protocol. Though there are further steps set out where agreement cannot be reached.

12. Intellectual property, including GIs, is a reserved matter under the devolution settlements, therefore consultation is not required for the purposes of this EM. However, Northern Ireland Executive has indicated an interest in these proposals and been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

13. Article 118(1) on intellectual property and Article 207(2) on common commercial policy of the Treaty on the Functioning of the European Union ('TFEU') establishes the EU's competency to act in this area.

ii. Voting Procedure

14. Qualified Majority Voting.

iii. Timetable for adoption and implementation

15. Early indications show that some aspects of the proposal may prove controversial with Member States, including the role of the European Intellectual Property Office (EUIPO) in GI administration. The Executive Director of the EUIPO has publicly commented that a "best case scenario" would see the Regulation agreed by 2024 at the earliest, with registration of GI rights following two to three years after the establishment of the scheme.

POLICY IMPLICATIONS

Intent and focus

16. The proposal is for a new regulation to harmonise NAGI protection across the EU through the creation of a new unitary European intellectual property right for craft and industrial products. The approach taken (including for eligibility and protection afforded to registered rights) follows that established by the existing sui generis EU GI schemes for agri-food, wines and spirits and the ongoing reform of this regime (EM 7639/22, COM(2022) 134).
17. This includes an increased role for the EUIPO and an obligation on Member States to designate a national authority to manage applications for NAGI products at national level. Although notably this proposal provides an element of flexibility, where Member States may, in exceptional cases, opt-out from the national level

commitments.

18. It is anticipated that the system will be mainly used by micro, small or medium-sized enterprises and the EU foresees reasonably low uptake within Member States, estimating 300 registrations in 10 years.

Wider impact

19. The proposed Regulation includes provisions which underpin the interaction between the new NAGI rights and trade marks. Initial analysis suggests that the provisions largely maintain the established status quo regarding the relationship between trade marks and GIs, however IPO and BEIS Legal will continue to monitor this as the file progresses.

20. The proposal will also enable EU participation in the Lisbon system (the international framework provided by the World Intellectual Property Organization for registration and protection of GIs) in relation to craft and industrial GIs. The EU acceded to Lisbon in 2019 but only in relation to GI protection where they had exercised competence, i.e. wines, spirits and agri-food products. A unitary NAGI system will therefore open up the Lisbon system to NAGIs, allowing EU producers to claim NAGI protection through the mechanisms provided by the Lisbon system. This will also operate in the reverse direction, where producers from third countries (who are signatory) will be able to use the Lisbon system to secure protection for their NAGIs in the EU. With regards to domestic policy on this point, the UK is not a member of the Lisbon system as we decided not to accede in our own right post EU-exit. In a similar vein, the proposed Regulation may also provide the possibility for more detailed NAGI provisions within the EU's bilateral free trade agreements. Until now, these provisions have been permissive or high level due to the lack of harmonisation across EU Member States.

Links to Northern Ireland Protocol

21. The draft legislation does not set out the EU's proposals for how the sui generis NAGI scheme would apply to Northern Ireland. In accordance with Article 13(4) of the Protocol, the proposal cannot apply in Northern Ireland unless both parties within the Joint Committee - the UK and the EU - agree to add the legislation to the relevant Annex to the Protocol. Though there are further steps set out where agreement cannot be reached.

22. It is not clear how a new sui generis NAGI scheme would apply in Northern Ireland. Adoption of the Regulation is not anticipated until 2024 at the earliest and subject to the procedure at Article 13(4) of the Protocol as outlined above. However, were the proposed Regulation to take effect, this could see the unitary NAGI scheme apply in Northern Ireland. A different mechanism of protection (currently provided through the trade mark system) would continue to apply

across the rest of the UK. It should also be noted that the Northern Ireland Protocol Bill is currently before Parliament. We will continue to monitor the situation in relation to this.

Domestic policy position

23. The UK's long-standing position is that a trade mark-oriented approach provides effective protection for NAGIs and there have been no widespread calls amongst stakeholders for change. Analysis of UK responses to an early EU consultation on NAGI proposals demonstrated very limited understanding among stakeholders on the benefits and disadvantages to business of GI protection. Additionally, there is no convincing evidence to suggest that there are deficiencies in the current system.
24. Introducing a UK sui generis NAGI system would require legislative change, though current evidence shows very limited potential benefits. A 2019 European study identified only five British products which could potentially benefit from NAGI protection¹. Compared to many other countries assessed in the report, the UK has far fewer NAGIs. For example, the report found Italy to have 51 already protected and an additional 39 as potential candidates for protection.

Impact of the proposal on the UK

25. As a close neighbour and trading partner, any changes to the EU approach will be of interest to the UK. We recognise that we may come under pressure from stakeholders to mirror any changes the EU makes, and we will want to ensure that our approach does not put UK businesses in a less advantageous position, than their EU-based counterparts. We would also need to consider the ramifications of any potential domestic UK sui generis NAGI scheme which would benefit a very limited number of UK businesses but have great benefits for foreign businesses including in the context of trade deals.
26. Furthermore, UK producers (through the mechanisms applicable to third countries) will be able to submit applications under the proposed sui generis EU NAGI scheme, in a similar manner as is the case currently with the existing EU GI schemes and the EU's unitary trade mark system.
27. As outlined above, it is not yet clear whether and how this measure, if implemented, would apply to Northern Ireland. The proposal cannot apply in Northern Ireland unless both parties within the Joint Committee - the UK and the

¹ See pages 38- 40 of [EPRS_STU\(2019\)631764_EN.pdf \(europa.eu\)](#)

EU - agree to add the legislation to the relevant Annex to the Protocol. Though there are further steps set out where agreement cannot be reached.

Prior engagement with the EU

28. HM Government was one of two UK responses to the EU's public consultation which closed in July 2021. Our response supported the need for effective protection mechanisms for NAGIs, but that the evidence provided was not sufficient to advocate the introduction of an EU-wide sui generis scheme.

CONSULTATION

29. Consultations started in 2013 and intensified in 2020 and 2021. This has included stakeholder surveys and face-to-face interviews, public consultations (in 2014, 2020 and 2021), workshops and targeted meetings with Member States followed by further written consultation with their intellectual property offices. The EU reports that NAGI producers, the European Parliament, the European Committee of the Regions, the European Economic and Social Committee, nine Member States and academia strongly support the establishment of a specific sui generis GI scheme. Four Member States supported the baseline "do nothing" option of maintaining the status quo and considered that existing trade mark protection is sufficient.

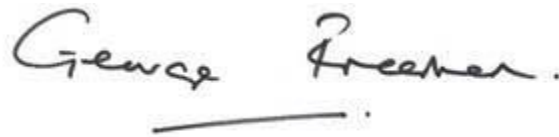
30. Since adopting and publishing the draft NAGI Regulation, including an accompanying Impact Assessment, the Commission is now seeking feedback from the public. The feedback period is open until 13 July 2022, after which point all feedback received will be summarised by the European Commission and presented to the European Parliament and Council with the aim of feeding into the legislative debate.

FINANCIAL IMPLICATIONS

31. The proposal foresees no implications on the EU budget. The EUIPO is self-financing and will manage and fund the EU registration process at EU and international level. At Member State level, the proposal outlines that 16 Member States already have NAGI schemes in operation and therefore should not incur additional administration costs (though the assessment here does not appear to consider any potential increase in applications in light of the new unitary scheme). The remaining Member States are expected to commit resources to the verification of GIs and all Member States will have to commit resources to the enforcement of protected NAGIs. EU analysis estimates the registration cost at national level to be approximately EUR 7,500 per GI. The cost for Member States of random controls and enforcement per GI is estimated at EUR 100 and EUR 3,900 respectively.

32. The proposal foresees low numbers of potential candidates for NAGI registration through the new scheme, with an assumption of 30 NAGIs registered annually at an annual cost of EUR 860,000 for the EU as a whole. The cost to protect (and enforce) third country NAGIs in the EU is noted but not specified, as the numbers here are uncertain. Though it estimates that the number of national NAGIs registered in China and India alone is between 400-800.
33. Whilst HM Government will continue to track the EU proposals to understand possible impacts on the UK, there are no current plans to undertake an Impact Assessment for this instrument.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink that reads "George Freeman." Below the signature is a horizontal line.

George Freeman MP

Parliamentary Under-Secretary of State (Minister for Science, Research and Innovation)

Department for Business, Energy and Industrial Strategy