

**REVIEW UNDER ARTICLE 24.2 OF THE APPLICATION OF THE  
PROVISIONS OF THE SECTION OF THE TRIPS AGREEMENT  
ON GEOGRAPHICAL INDICATIONS**

Responses to the Checklist of Questions<sup>1</sup>

Addendum

CROATIA

The present document contains the responses to the Checklist of Questions which the Secretariat has received from the delegation of Croatia by means of a communication dated 4 June 2010, and distributed as an advance copy for the TRIPS Council meeting on 8 June 2010.

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**I. SECTION A: GENERAL**

**1. Is protection for geographical indications provided through unfair competition law, e.g. passing off, false designation of origin; through a formal procedure for notification/registration before protection is available; or through both? Does the recognition of a geographical indication require registration?**

The protection for geographical indications is provided through special laws on the protection of geographical indications. There is a formal procedure for registration of geographical indications envisaged. Protection accorded by these laws is available only for registered geographical indications.

Since the provision on unfair competition contains a very broad definition by which unfair competition is considered among others "any sale of the goods with indications or data or appearance that create or might create confusion regarding the source, way of production, quantities, qualities or other characteristics of the goods" the protection of geographical indication can also be provided through unfair competition law.

**2. Is there one single regime of protection of geographical indications for all products? If not, identify the different regimes.**

No, there are several different regimes of protection of geographical indications: there is a general law which provides for the regimes of protection of geographical indications for all products and service, unless there has been a special regime established for the protection of some of the products.

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<sup>1</sup> Documents IP/C/13 and IP/C/13/Add.1.

Such special regimes have been established for the protection of geographical indication for agricultural products and foodstuffs and separately also for wines and spirits.

**3. Do(es) the regime(s) of protection of geographical indications also extend to services?**

Yes, the general law provides for the protection of geographical indications for both products and services.

**4. What provisions of law or regulations are directed to the recognition of geographical indications required by Article 22.2 and 23.1 of the TRIPS Agreement? Citations to laws should be provided and, if the texts of the laws have not been notified to the WTO, copies should be provided pursuant to Article 63.2.**

*Trademarks Act of 2003 (OG 173/03, 76/07 and 30/09)*

Article 5

(1) The following shall not be registered.

...

9. signs for wines which contain or consist of geographical indication identifying wines and signs for spirits which contain or consist of geographical indication identifying spirits with respect to such wines or spirits not having that geographical origin

11. signs which contain or consist of designations of origin or geographical indications, in effect in the territory of the Republic of Croatia, if a request for the registration of a trademark has been filed after the filing date of a request for the registration of a designation of origin or a geographical indication within the scope provided by legislation, by virtue of which such designations are registered, and which refer to the same type of products and services.

*Act on Geographical Indications and Designations of Origin of Products and Services of 2003 (OG 173/03, 186/03 and 76/07)*

Article 16

1. Registered designation of origin or geographical indication shall be protected against: (...)

4. any use of false or misleading information as regards the geographical origin, nature or quality of a product or a service on the packaging, advertising material, or other documents suggesting a relation between the product or service and the protected name;

6. any use of translation or transliteration, even where a true origin of products and services is indicated, and any use of the protected name which is accompanied by a term: "style", "type", "manner", "according to process", "method", "produced in", "imitation" and the like;

7. any other practice liable to mislead the public as to the geographical origin of a product or a service.

*Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008 (OG 84/08, 75/09 and 26/10)*

Article 14

1. Registered designation of origin or geographical indication shall be protected against:

- (a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;

- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the name of the designation of origin or geographical indication is translated or transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the consumer as to the true origin of the products.

*Act on Wine of 2003 (OG 96/03)*

Article 33

Is it prohibited to use the designation of controlled geographical origin for wines which are not originating in the indicated geographical area or place where the designation is traditionally used even where:

- the true origin of wine is indicated
- the designation of controlled geographical origin is used in translation
- the designation is accompanied by expressions such as "kind", "type", "style", "imitation", "process" or the like.

*Ordinance on spirit drinks of 2009 (OG 61/09 and 141/09)*

Article 16

Without prejudice to Article 10, the geographical indications registered in Annex III shall be protected against:

- (a) any direct or indirect commercial use in respect of products not covered by the registration in so far as those products are comparable to the spirit drink registered under that geographical indication or insofar as such use exploits the reputation of the registered geographical indication;
- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or the geographical indication is used in translation or accompanied by an expression such as 'like', 'type', 'style', 'made', 'flavour' or any other similar term;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities on the description, presentation or labelling of the product, liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the consumer as to the true origin of the product.

**5. If the required recognition of geographical indications is not provided through statutes or regulations, please explain, in detail, the mechanism or mechanisms through which the protection required is provided.**

It is provided in the law.

**6. Please provide a few examples of domestic geographical indications protected in accordance with the means discussed above and indicate the means by which such protection is provided.**

There are two geographical indications protected under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003: THE LACE OF PAG and THE LACE OF LEPOGLAVA.

Under the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs there is one protected geographical indication - Paška sol ili Paška morska sol (THE PASKA SALT or THE PASKA SEA SALT), and also there are five old registered products (Istarski pršut - ham, Dniski pršut - ham, Paški sir -cheese, Cetinski sir - cheese and Slavonski kulen-kulin – kind of dry sausage) in the procedure of the renewal of the registration.

There are several designations of controlled geographical origin for wines protected.

There are six geographical indications for spirit drinks protected under the Ordinance on spirit drinks of 2009 : "Hrvatska loza", "Hrvatska travarica", "Hrvatska stara šljivovica", "Slavonska šljivovica", "Zadarski maraschino" and "Pelinkovac").

**7. Is the higher level of protection required for wines and spirits under Article 23.2 of the TRIPS Agreement provided for any other product? If so, please specify such products and the law under which they are protected.**

Yes, the higher level of protection is provided for agricultural products and foodstuffs under the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs and for all other products and services under the cited provision of the Act on Geographical Indications and Designations of Origin of Products and Services.

**II. SECTION B: DEFINITION AND CRITERIA FOR RECOGNITION**

**8. How are geographical indications defined?**

Under the law "designation of origin" means the name of a region, a specific place or, in exceptional cases, a country, used to describe a product originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which entirely take place in the defined geographical area, whereas "geographical indication" means the name of a region, a specific place or, in exceptional cases, a country, used to describe a product originating in that region, specific place or country, and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin, and the production and/or processing and/or preparation of which take place in the defined geographical area.

**9. Would such a definition comprise geographical indications identifying products of a certain quality or reputation which are indirectly linked to a specific region?**

The definition comprises geographical indications identifying products of a specific quality or reputation attributable to that geographical origin. The production and/or processing and/or preparation must take place in the defined area; therefore products can be indirectly linked in some of these stages of production with the specific region.

**10. In determining whether recognition should be given a geographical indication, what criteria are considered?**

It is considered whether the request is justified and whether all necessary requirements of the law and regulations are met.

**11. Is there any human creativity involved in the making of specific products under protection by the system of geographical indications? If so, how much? And do these products involve any human factors?**

Under the definition of "designation of origin" (see above under 8.) the quality and characteristics of a product have to be due exclusively or essentially to a particular geographical environment, including natural and human factors. The human factor is largely involved in the specific manufacturing technology. What is the extent of the human creativity in terms of quantity is not available.

**12. Are there any other intellectual property rights involved, such as patents for example?**

No.

**13. What authority, if any, may define the geographic region or area for which rights are claimed and on what basis is such definition made?**

There is no authority that defines the geographical region or area. This is defined in the specification which must be supplied together with the application. Another requirement is also that the specification contains a clear and detailed explanation of the link between the specific characteristics and the geographical area so defined which must satisfy the definition of a geographical indications/designation of origin.

**14. Does your legislation contain criteria for homonymous geographical indications for wines?**

All homonymous geographical indications for wines that are registered by the competent authority enjoy protection. There are no further criteria for their protection contained in the relevant legislation.

**15. Does your national legislation provide for recognition and protection of geographical indications and appellations of origin of foreign countries?**

Under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 foreign persons may apply for the protection of geographical indications and designations of origin if they have been granted rights in the country of origin and if they comply with the requirements defined in that Act.

According to the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs the registration and protection of the foreign designations of origin, geographical indications in the Republic of Croatia can be realized on the basis of international (bilateral) agreement on mutual protection of registered designations of origin and geographical indications. Indications which are not registered or have ceased to be valid in the country of origin may not be registered and protected in the Republic of Croatia.

**16. Is there any specific prohibition in the legislation/regulations/rules/procedures covering geographical indications not protected in the country of origin? If so, please specify the relevant statutory provisions.**

As above, in answer to question 15.

### **III. SECTION C: PROCEDURE FOR RECOGNITION**

**17. With respect to any formal system for recognition of geographical indications, must the applicant be a governmental organization or can a private entity own the rights to a geographical indication?**

There is no requirement that the applicant must be a governmental organization. The applicant may also be an association of producers and/or processors, whereas an individual producer, either a natural or legal person, can apply for protection only exceptionally if certain conditions are met, under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003

According to the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs only a "group" may be the applicant. For the purposes of this Act "group" means any association, irrespective of its legal form or composition, of producers or processors working with the same agricultural product or foodstuff. In exceptional cases the applicant may also be individual natural or legal person (producer or processor) if certain conditions are met.

**18. What are the competent authorities where the protection of a geographical indication can be obtained?**

For the protection of geographical indications for wines, spirits, agricultural products and foodstuffs it is the Ministry of Agriculture, Fisheries and Rural Development, and for all other products and services the State Intellectual Property Office.

**19. Do the procedures which lead to the recognition of a geographical indication take place ex officio or must they be based on the initiative of an entity or person?**

The procedure for registration must be initiated by an entitled applicant.

**20. What, if any, fees are involved in the application and maintenance of rights in a geographical indication?**

For registration of a geographical indication before the State Intellectual Property Office fees in the amount of HRK 1550, which is approximately US\$270, must be paid.

For registration of a geographical indications according to the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs the fees in the amount of HRK 70,00, which is approximately US\$12, must be paid.

**21. If criteria must be set out in an application for recognition of a geographical indication, are those criteria purely geographic in nature?**

No.

**22. What other criteria, if any, must be set out in an application for recognition of a geographical indication?**

The quality or characteristics of the product must be essentially or exclusively due to a particular geographical environment with its inherent natural and human factors. In that respect not only purely geographical criteria can be set out but also human factors of a particular geographical environment.

**23. What information must be supplied in an application for rights in a geographical indication?**

Under the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008 the request for registration must include at least:

- (1) the name and address of the applicant group;
- (2) product specification;
- (3) a single document setting out the following:
  - a. main points of the specification: the name, a description of the product, including where appropriate, specific rules concerning packaging and labeling, and a concise definition of the geographical area;
  - b. the description of the link between the product and the geographical environment or geographical origin referred to in the legal definition of the geographical indication and designation of origin, as the case may be including where appropriate, the specific elements of the product description or production method justifying the link.

The Ordinance on designations of origin and geographical indications for agricultural products and foodstuffs of 2009 also prescribe the other documents which must be submitted with application:

- a copy of the proof of registration of the group;
- the statute of the group;
- the contract or agreement between the group and the certification body concerning the drafting of the Control Plan referred to in Article 21, paragraph 3, of this Ordinance;
- power of attorney of the person representing the applicant group (attested by a notary public);
- a copy of the decision on the registration or approval of the production establishment, for each member of the group (in accordance with the Food Act, OG 46/07 and 155/08);
- the product specification;
- the agreement of the certification body to verify compliance with the product specification;
- an analysis of the existing and planned production;
- a proposal for an own-checks programme;
- the single document.

Under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 it must include:

- (1) a request for registration;
- (2) a specification;
- (3) evidence of the payment of fees;
- (4) power of attorney if the applicant is being represented;
- (5) signature.

Under the Ordinance on spirit drinks (OG 61/09 and 141/09) the request for registration must contain:

- the data on the applicant group (the name and the address);
- the data on any member of the applicant group who is the producer or processor of the spirit for which the geographical indication is registered (the name, the address and the identification number);
- signature.

And must be accompanied by:

- the technical file;
- excerpt from the court register;
- proof that the spirit is produced in accordance with the specification;
- proof that the product is produced on the geographical area claimed.

The technical file shall include at least the following main specifications:

- (a) the name and category of the spirit drink including the geographical indication;
- (b) a description of the spirit drink including the principal physical, chemical and/or organoleptic characteristics of the product as well as the specific characteristics of the spirit drink as compared to the relevant category;
- (c) the definition of the geographical area concerned;
- (d) a description of the method for obtaining the spirit drink and, if appropriate, the authentic and unvarying local methods;
- (e) the details bearing out the link with the geographical environment or the geographical origin;
- (f) any requirements laid down by Community and/or national and/or regional provisions;
- (g) the name and contact address of the applicant;
- (h) any supplement to the geographical indication and/or any specific labelling rule, according to the relevant technical file.

**24. Must the goods or services with respect to which a geographical indication is claimed be set out?**

Yes, in the specification.

**25. What mechanisms are provided to oppose the recognition of a geographical indication? How is an investigation conducted after such a complaint?**

Under the Ordinance on spirit drinks the request for registration is published in the Official Gazette of the Republic of Croatia and any natural or legal person that has a legitimate interest may file an opposition within 30 days from such publication.

Under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003, after the publication of the application for registration (for other products and service in the Official Gazette of the State Intellectual Property Office) any interested person may file an opposition within 3 months from such publication.

Under the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs after the publication of the application for registration in the Official Gazette of the Republic of Croatia any interested person may file an opposition (objection) within 3 months from such publication.



Oppositions are decided upon the observations of the parties by the competent authorities.

**26. Who can oppose the recognition of a geographical indication?**

Any interested person may oppose to the registration of a geographical indication under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003.

According to the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs in the procedure of the registration on the national level any natural or legal person having a legitimate interest and established or resident in the Republic of Croatia.

In Ordinance on spirit drinks any natural or legal person that has a legitimate interest and has residence in Republic of Croatia.

**27. If your national legislation provides for recognition and protection of geographical indications or appellations of origin of foreign countries, what is the procedure that has to be followed in order to obtain such recognition and consequent protection?**

The same as the procedure prescribed for the protection of domestic geographical indications. In addition to what must be submitted in an application, the evidence on the protection of a designation of origin or a geographical indication in its country of origin in the form of a true copy of a public document or other legal document in the official language of the country of origin or a certified translation into the Croatian language must also be submitted.

According to the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs the registration and protection of the foreign designations of origin, geographical indications in the Republic of Croatia can be realized on the basis of international (bilateral) agreement on mutual protection of registered designations of origin and geographical indications. Indications which are not registered or have ceased to be valid in the country of origin may not be registered and protected in the Republic of Croatia.

**IV. SECTION D: MAINTENANCE**

**28. How long does recognition for a geographical indication continue?**

The protection of geographical indication is not limited in time.

**29. If recognition of a geographical indication must be renewed or reaffirmed, what information must be provided in order to affect such a renewal or reaffirmation? Specify any fees involved in the renewal or reaffirmation.**

Not applicable.

**30. Must a geographical indication be used in order to maintain rights? If so, how is such use determined?**

There is no such requirement envisaged in the legislation.

**31. Is there a specified limit for non-use before rights in a geographical indication cease and, if so, what is that limit?**

Not applicable.

**32. Who monitors the use of geographical indication to determine if the criteria identified in the application continue to be met?**

Under the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008 the use is monitored by legal entities (not government entities) called certification bodies who are entitled to do so by the Minister of Agriculture, Fisheries and Rural Development. Moreover, according to the mentioned Act the agricultural inspectors and food quality inspectors (Ministry of Agriculture, Fisheries and Rural Development) are involved in the monitoring of geographical indications.

Under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 every authorised user in order to get that status which allows him to use the geographical indication must submit prove that he has entrusted an expert body to monitor the use of geographical indication on a regular basis.

**33. If a government entity is responsible for monitoring the use of geographical indications, what are its procedures for doing so?**

Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008 prescribe the responsibilities of the agricultural inspectors and food quality inspectors:

Article 41

(1) Agricultural inspection and food quality inspection shall perform the following tasks:

1. supervise the work of users of registered indications entered into the registers referred to in Article 11, paragraph 2 and Article 28, paragraph 2 of this Act,
2. take samples of agricultural products and foodstuffs with a view of verification of compliance with the specification,
3. temporarily prohibit the use of a registered indication and marketing of agricultural products and foodstuffs with a protected indication which does not comply with the conditions indicated in the specification, for not longer than six months,
4. propose to the Ministry deleting the user from the registers referred to in Article 11, paragraph 2 and Article 28, paragraph 2 of this Act,
5. keep official evidence for the territory of the county on breaches of the provisions of this Act and regulations issued on the basis thereof,
6. report to the competent state administration bodies on observed irregularities and request taking certain actions, if not authorised to act directly,
7. submit an indictment proposal for initiating misdemeanour proceedings for the breach of the provisions of this Act and regulations issued on the basis thereof,
8. take other measures and actions regulated by this Act and regulations issued on the basis thereof.

Agricultural inspection and food quality inspection shall perform the mentioned activities according to the annual control plan and in the case when the certification body verifies significant non-compliance with the specification.

**34. Are there means by which interested parties may request termination of a geographical indication based on non-use or failure to maintain the criteria identified in the application? Describe the procedure.**

Under the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008 it is possible to request cancellation of a registered geographical indication if it is found that the compliance with the conditions of the specification for a product covered by a registered geographical indication is no longer possible and cannot be ensured.

Under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 the request for cancellation may be made if the conditions for the protection of a geographical indication did not exist or certain bars for such registration existed or the applicant was not entitled to apply for such registration.

**35. Do the procedures which lead to forfeiture of a geographical indication take place ex officio or must they be based on the initiative of an entity or person?**

Such procedures may be initiated either ex officio (under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 additionally also by the State Attorney) or by an interested person.

The procedure for cancellation of the geographical indication may be initiated by the Ministry ex officio and any natural or legal person who have a legitimate interest according to the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008.

**V. SECTION E: SCOPE OF RIGHTS AND USE**

**36. May anyone who meets the criteria submitted to obtain recognition of a geographical indication use that geographical indication after recognition is given or must additional criteria or procedures be followed by that party before use is permitted?**

To be entitled to use a geographical indication a person who meets the criteria of the specification must furthermore be registered as an Authorized User according to the procedure regulated in law and regulation.

**37. Who makes the determination regarding use of a geographical indication by particular parties, the entity responsible for the recognition or the entity that obtained the recognition?**

The entity responsible for the recognition decides on whether to register a person as an Authorized User or not. The Ministry of Agriculture, Fisheries and Rural Development (for agricultural products and foodstuff and spirits) or the State Intellectual Property Office (for other products or services) is responsible for the registration of authorized users.

**38. Are there fees involved in receiving authorization to use a particular geographical indication and, if so, what are those fees and how are they established?**

For registration of an authorized user of a geographical indication registered before the State Intellectual Property Office fees in the amount of HRK 1500, which is approximately US\$270, must be paid. For registration of an authorized user of a geographical indication registered before the Ministry of Agriculture, Fisheries and Rural Development fees in the amount of HRK 70,00, which is approximately US\$12, must be paid.

**39. If there is a dispute regarding use of a geographical indication by a particular party, what procedures are followed to resolve it?**

The right of use can be revoked according to the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 by a decision of the State Intellectual Property Office ex officio or following a request of an interested party or the State Attorney.

Under the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008 authorized user can be deleted from the register, if the certification body inform the Ministry about the significant non-compliance with specification and provisions of the law, following a decision by the Minister made upon a recommendation by an expert committee.

Under the Ordinance on spirit drinks an authorized user can be deleted from the register following a decision by the Minister made upon a recommendation by an expert committee.

**40. Must individual authorized user of a geographical indication use that geographical indication continually to retain their right to use it and, if so, how is their use determined and how long will disuse be permitted?**

Such obligation is not envisaged in the current legislation.

**41. If there is a dispute over continuity of use by a particular party, how is it resolved?**

Not applicable.

**42. Does the regime for protection of geographical indications allow geographical indications to be licensed, and, if so, what conditions are imposed on such licenses? If such conditions are not met, what is the effect on the geographical indication?**

Geographical indications cannot be the subject matter of a license agreement.

**43. How is "grandfathered use" of a geographical indication, under Article 24.4 of the TRIPS Agreement, applied in your country?**

There is no implementing provision in the legislation. There were no cases relating to the grandfathered use from Article 24.4. reported.

## **VI. SECTION F: RELATIONSHIP TO TRADEMARKS**

**44. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Article 16.1 of the TRIPS Agreement are not nullified and impaired?**

If the registration of the name proposed would jeopardize the existence of an entirely or partially identical name or of a trademark or the existence of products which have been legally on the market for at least five years preceding the date of the publication of the geographical indications, such geographical indications can be opposed and will not be registered following the Act on Geographical Indications, Designations of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008.

Under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 an application for registration of a geographical indication can be opposed by a trademark owner if it is in its entirety or in part identical with that trade name registered in good faith and if its protection would jeopardize the right of that trade name or trademark, having regard to the actual likelihood of confusion.

**45. What steps are taken to ensure that, in recognizing a geographical indication, the obligations of Article 16.2 and 16.3 of the TRIPS Agreement are not nullified and impaired?**

Under the Act on Geographical Indications, Designation of Origin and Traditional Specialities guaranteed of agricultural products and foodstuffs of 2008, a geographical indication shall not be registered if in the light of a trade mark's reputation and renown and the length of time it has been used, registration is liable to mislead the consumer as to the true identity of the product.

Under the Ordinance on spirit drinks of 2009 a geographical indication shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used in the Community, registration is liable to mislead the consumer as to the true identity of the product.

Trademark owner can under the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 oppose the application for registration of a geographical indication if the trademark has acquired special reputation and renown through prior continuous use, if the protection of a geographical indication may mislead the consumer as to the true origin of the product.

**46. What procedures are foreseen in case of a conflict of a geographical indication with a trademark?**

The principle of coexistence is envisaged in the following case: a trademark the use of which would represent the infringement of a geographical indication which has been applied for or registered in good faith before the date of filing of the application for registration of a geographical indication may continue to be used notwithstanding the registration of a geographical indication.

**VII. SECTION G: ENFORCEMENT**

**47. How are rights in the geographical indication enforced? Are provisions available under unfair competition law? Trademark law? Other laws? Provide citations to the laws and, if they have not been notified under Article 63.2 of the TRIPS Agreement, please provide copies.**

The rights in the geographical indications are enforced through legal actions in the civil procedures. Protection under unfair competition law is also available (as per answer under question1.).

Provisions relating to the infringement of a geographical indication are contained in the Act on Geographical Indications and Designations of Origin of Products and Services of 2003 and are applicable in relation to all geographical indications registered (even those relating to agricultural products and foodstuffs, wines and spirits). Those provisions indicate who is entitled to enforce a geographical indication and what is considered to be an infringement of geographical indications, and further regulate that in all other questions the provisions of the Trademarks Act of 2003 (OG 173/03, 76/07 and 30/09) concerning the civil enforcement of trademarks shall apply *mutatis mutandis* to civil protection of goods and services.

Following are the relevant provisions of the Trademarks Act

Article 76

Claim for the establishment and termination of infringement

1. The holder of a trade mark may institute a legal action against any person who has infringed a trade mark by performing without authorization any of the acts referred to in Article 7, paragraphs 2 and 3 of this Act, claiming establishment of the infringement.

2. The holder of a trade mark may institute a legal action against any person who has infringed a trade mark by performing without authorization any of the acts referred to in Article 7, paragraphs 2 and 3 of this Act, claiming termination of the infringement and prohibition of such and similar future infringements.

3. The holder of a trade mark may institute a legal action against any person who has by performing any of the acts without authorization caused a serious threat that his trade mark might be infringed, claiming desistance from the act concerned and prohibition of the infringement of the trade mark.

4. The claims referred to in paragraphs 1, 2 and 3 of this Article may also be made against a person who in the course of her/his economic activities renders services used in the acts infringing a trade mark or threatening to infringe it.

#### Article 77

##### Claim for seizure and destruction of objects

1. The holder of a trade mark may institute a legal action against any person who has infringed a trade mark by performing without authorization any of the acts referred to in Article 7, paragraphs 2 and 3 of this Act, claiming that the products infringing the trade mark be removed from the market, seized or destroyed at the expense of that person.

2. The court shall order the measures referred to in paragraph 1 of this Article against the defendant, unless there are special reasons for not deciding so.

3. When ordering the measure referred to in paragraph 1 of this Article, the court shall take due care that they are proportionate to the nature and seriousness of the infringement.

#### Article 78

##### Claim for damages, usual compensation and unfair profits

1. The holder of a trade mark may take a legal action against any person who has caused him damage by performing without authorization any of the acts referred to in Article 7, paragraphs 2 and 3 of this Act, claiming damages pursuant to the general rules on the legal redress laid down in the Obligations Act.

2. The holder of a trade mark may institute a legal action against any person who has performed without authorization any of the acts referred to in Article 7, paragraphs 2 and 3 of this Act, claiming payment of remuneration in the amount that he would have claimed, given the circumstances, in the license agreement, if concluded.

3. The holder of a trade mark may take a legal action against any person who has infringed a trade mark by performing without authorization any of the acts referred to in Article 7, paragraphs 2 and 3 of this Act, without having basis for it in any legal transaction, court decision or the law, and has benefited from it, claiming the recovery or compensation of such benefits pursuant to the general rules on unjust enrichment laid down in the Obligations Act.

4. The claims referred to in paragraphs 1, 2 and 3 shall not be mutually excluding. When deciding on the claims referred to in paragraphs 1, 2 or 3, filed cumulatively, the court shall observe the general principles laid down in the Obligations Act.

#### Article 79

##### Claim for publication of the judgment

The holder of a trade mark may claim that the final judgment even partially upholding the claim for protection of the trade mark in the case of infringement is published in the means of public communication at the expense of the defendant. The court shall decide, within the limits of the claim, on the means of public communication in which the judgment shall be published, and whether it shall be published entirely or partially. If the court decides that only a part of the judgment shall be published, it shall order, within the limits of the claim, that at least the dispositive part of it and, if necessary, the part of the judgment specifying the infringement concerned and the person, having committed it, is published.

#### Article 79a

##### Claim for provision of information

1. The holder of a trade mark who has instituted civil proceedings for the protection of the trade mark in the case of infringement may claim the provision of information on the origin and distribution channels of the goods infringing his trade mark.

2. The claim referred to in paragraph 1 may be made in the form of a legal action or a provisional measure against:

2.1. a person who has been sued in the civil proceedings referred to in paragraph 1 of this Article;

2.2. a person who is within her/his economic activities in possession of the goods suspected of infringing a trade mark;

2.3. a person who provides, within her/his economic activities, services suspected of infringing a trade mark;

2.4. persons who provide, within their economic activities, services used in the activities suspected of infringing a trade mark;

2.5. a person who is indicated by any of the mentioned persons as being involved in the manufacture or distribution of the goods or the provision of the services suspected of infringing a trade mark;

3. The claim referred to in paragraph 1 may also be included in a gradual legal action as the first claim, provided that a person acting as a counter party to the defendant is also included in the main claim.

4. The claim for information on the origin of the goods and distribution channels of the goods and services referred to in paragraph 1 of this Article may include in particular:

4.1. information on the names and addresses of the producers, distributors, suppliers and other previous holders of the goods and providers of the services, respectively, as well as the intended wholesalers and retailers;

4.2. information on the quantities produced, delivered, received or ordered, as well as the price obtained for the goods or services concerned.

5. The person required to provide the information referred to in this Article may refuse to provide such information on the same grounds as those allowing the refusal to present evidence as a witness pursuant to the provisions of the Act on Civil Proceedings. If the person concerned refuses to provide information without justified reasons, she/he shall be responsible for the damage incurred, pursuant to the provisions of the Obligations Act.

6. The provisions of this Article shall be without prejudice to the provisions on the manner of use of confidential information in civil and criminal proceedings, the provisions regulating the responsibility for misuse of the right to acquire information, and the provisions regulating the processing and protection of personal data.

7. The provisions of this Article shall be without prejudice to the provisions of Articles 79c and 79d of this Act regulating the taking of evidence.

#### Article 79b

##### Provisional measure due to infringement of a trade mark

1. Upon the request of the holder of a trade mark who makes it likely that her/his trade mark has been infringed or threatened to be infringed, the court may order any provisional measure comprising the termination or prevention of the infringement, and in particular:

1.1. order the opposing party to cease or desist from, the acts infringing a trade mark; the court may also issue such order against an intermediary whose services are being used by a third party to infringe a trade mark;

1.2. order the seizure or removal from the market of the goods unlawfully designated by a trade mark.

2. Upon the request of the holder of a trade mark who makes it likely that his trade mark has been infringed on a commercial scale for the purpose of acquiring commercial or economic benefit, and that such infringement has threatened to cause him irreparable damage, the court may, in addition to the provisional measures referred to in paragraph 1 of this Article, order the seizure of the movable and immovable property of the opposing party, not directly related to the infringement, including the blocking of his bank accounts and other assets.



3. For the purpose of ordering and enforcing the provisional measure referred to in paragraph 2 of this Article, the court may require from the opposing party or other relevant persons disposing with it, the communication of the banking, financial and other economic information, or the access to other relevant information and documents. The court shall ensure the protection of confidentiality of such information, and prohibit any misuse thereof.

4. The provisional measure referred to in paragraph 1 of this Article may be ordered without informing the opposing party thereof, if the applicant for measures makes it likely that otherwise the provisional measure would not be effective, or that irreparable damage is threatened to occur. The provisional measure referred to in paragraph 2 of this Article may be ordered without informing the opposing party thereof, if the applicant for measures makes it likely that otherwise the provisional measure would not be effective, or that, taking into consideration a very serious circumstances of the infringement, this would be necessary. If a provisional measure is ordered without informing the opposing party thereof, the court shall communicate a decision on the provisional measure to the opposing party, promptly upon its enforcement.

5. In the decision ordering a provisional measure the court shall specify the duration of such measure, and, if the measure has been ordered before the institution of a legal action, the period, within which the applicant for measures shall institute a legal action to justify the measure, which shall not be less than 20 working days and not more than 31 calendar days, from the day of communication of the decision to the applicant for measures, whichever expires later.

6. The provisions of the Execution Act shall apply to matters, not regulated by this Article.

7. The provisions of this Article shall be without prejudice to the possibility to order provisional measures pursuant to other provisions of this Act, and the provisions of the Execution Act.

#### Article 79c

##### Provisional measure comprising the preservation of evidence

1. Upon the request of the holder of a trade mark who makes it likely that his trade mark has been infringed or threatened to be infringed, the court may order a provisional measure comprising the preservation of evidence.

2. By the provisional measure referred to in paragraph 1 of this Article, the court may order in particular:

2.1. preparation of a detailed description of the goods made likely to infringe a trade mark, with or without taking of samples;

2.2. seizure of the goods made likely to infringe a trade mark;

2.3. seizure of the materials and implements used in the production and distribution of the goods made likely to infringe a trade mark and the documentation relating thereto.

3. The provisional measure referred to in this Article may be ordered even without informing the opposing party thereof, if the applicant for measures makes it likely that there is a risk of evidence being destroyed or irreparable damage of incurring. If a provisional measure is ordered without informing the opposing party thereof, the court shall communicate a decision on the provisional measure to the opposing party, promptly upon its enforcement.

4. In the decision ordering a provisional measure the court shall specify the duration of the measure, and, if the measure has been ordered before the institution of a legal action, the period, within which the applicant for measures shall institute a legal action to justify the measure, which shall not be less than 20 working days and not more than 31 calendar days, from the day of communication of the decision to the applicant for measures, whichever expires later.

5. The provisions of the Execution Act shall apply to matters, not regulated by this Article.

6. The provisions of this Article shall be without prejudice to the possibility of the court to order provisional measures comprising the preservation of evidence pursuant to the provisions of the Act on Civil Proceedings.

#### Article 79d

#### Taking of evidence in the course of the civil procedure

1. Where a party to the civil proceedings invokes evidence claiming that it lies with the opposing party or under its control, the court shall invite the opposing party to present such evidence within a specified time limit.

2. Where the holder of a trade mark as a plaintiff in a legal action claims that the infringement of a trade mark has been committed on a commercial scale for the purpose of acquiring commercial or economic benefit, and has made it likely during the proceedings, and where he invokes in the proceedings banking, financial or similar economic documents, papers or the like evidence, claiming that they lie with the opposing party or under its control, the court shall invite the opposing party to present such evidence within a specified time limit.

3. Where the party, which is invited to present evidence, denies that the evidence lies with it or under its control, the court may take evidence to establish such a fact.

4. The provisions of the Act on Civil Proceedings relating to the right of refusal to present evidence as a witness shall apply *mutatis mutandis* to the right of the party to refuse to present evidence.

5. The court shall, taking into consideration all the circumstances of the case, decide at its own discretion, on the importance of the fact that the party having the evidence refuses to comply with the court's decision ordering it to present evidence, or denies, contrary to the court's opinion, that the evidence lies with it.

6. Against the decision of the court referred to in paragraphs 1 and 2 a separate appeal shall not be allowed.

Article 79e

Expeditious proceedings and application of the provisions of other Acts

1. A procedure concerning the infringement of the rights under this Act shall be expeditious.
2. The provisions of the Act on Civil Proceedings, and the Execution Act, respectively, shall apply to the procedures concerning the infringement of a trade mark.
3. Upon the request of the court or any of the parties to the procedure concerning the infringement of a trade mark, the Office or the Board of Appeal, respectively, shall promptly accept a request for the declaration of the decision on the registration of a trade mark invalid, filed before or during the civil action and shall subject it to the expeditious proceedings. The court shall, taking into consideration the circumstances of the case, decide whether it shall decide on the stay of proceedings up to the final decision on the request for the declaration of the decision on the registration of a trade mark invalid, or not.

**48. Who has the right to enforce a geographical indication?**

Protection of the geographical indication may be claimed by a person who registered a geographical indication, authorized users of geographical indications, associations in the field of industry and trade and the State Attorney.

**49. What judicial or administrative bodies have jurisdiction over enforcement actions related to geographical indications? Are there fees involved, and, if so, what are those fees?**

Four commercial courts (in Zagreb, Rijeka, Split and Osijek) have exclusive court competence to solve all cases relating to the infringement of intellectual property rights. Fees are depending on the value of the case in question indicated by the plaintiff.

**50. Must the public be notified of the existence of a geographical indication and, if so, how and how often?**

Geographical indications for agricultural products, foodstuffs and wines are published in the Official Gazette of the Republic of Croatia and geographical indications for other products and services are published in the Official Gazette of the State Intellectual Property Office. Geographical indications for spirits are contained in the addendum of the Ordinance and as such published in the Official Gazette of the Republic of Croatia.

**51. Is unauthorized use of a geographical indication subject to criminal action and, if so, describe the procedures. If the law has not been notified under Article 63.2 of the TRIPS Agreement, please provide a copy.**

Unauthorized use of a geographical indication is a crime following Article 285 of the Criminal Act of 1997 (OG 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07 and 152/08) for which monetary fine or imprisonment of up to three years is prescribed. The State Attorney shall initiate the criminal procedure in the name of the Republic of Croatia.

## VIII. SECTION H: INTERNATIONAL AGREEMENTS

**52. Is your government party to an international, including bilateral or plurilateral, agreement for the notification and/or registration of geographical indications? If so, please name the international agreement and explain the relationship between it and your national legislation?**

Croatia is not a party to any such agreement.

**53. What other international agreements, if any, have been entered into? What do those agreements provide?**

No other international agreements that would relate to geographical indications have been entered into.

Addendum

**Section A**

**Does your economy's industrial property law and/or related law prevent the use of geographical indications identifying wines or spirits against products not originating in the place indicated by the geographical indication, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like?**

Yes, see answer to question 4.

**Section B**

**Is there a clear distinction among the terms "geographical indications", "appellations of origin" and "indications of source" in your economy's industrial property law and/or related law, or are there any substantive criteria to distinguish these terms?**

There is a clear distinction of the terms geographical indications and designations of origin, which follows from the definition of these terms given in the legislation (see answer to the question under (8)). The term appellation of origin is not used in legislation.

**Does your legislation contain criteria for homonymous geographical indications for wines and spirits?**

See answer to question 14.

**Section C**

**Does your economy's industrial property law and/or related law provide the refusal or invalidation of a trademark registration, which consist of or contains geographical indications identifying wines or spirits with respect to such wines or spirits not originating in the indicated territory?**

Yes, see answer to question 4.

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