

## **LAW ON INDICATIONS OF GEOGRAPHICAL ORIGIN**

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(consolidated text)

### **I. SUBJECT-MATTER AND CONDITIONS FOR PROTECTION**

#### **Subject Matter of the Law**

##### **Article 1**

- (1) This Law shall regulate the acquisition and legal protection of indications of geographical origin.
- (2) Indications of geographical origin shall be appellation of origin and geographical indication.

#### **Use of Indications of Geographical Origin**

##### **Article 2**

- (1) Indications of geographical origin shall be used to mark natural, agricultural and industrial products, products of traditional handicrafts and services.
- (2) This Law shall not apply to products and services where acquisition, legal protection and the exercise of rights in respect of the use of the indication of geographical origin regulated by the specific regulation.

#### **Appellation of Origin**

##### **Article 3**

- (1) An appellation of origin shall be the geographical name of a country, region or a locality, used to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors, and which is produced, processed or prepared within a specific limited geographical area.
- (2) Exceptionally, a product may be designated by an appellation of origin where the raw materials for the production thereof originates from a geographical area that is wider or different than the geographical area of production, provided that:
  - 1) The area of production of raw material is limited;
  - 2) There are specific conditions for the production of raw materials;
  - 3) There is a system of control in place, which shall ensure fulfillment specific conditions for the production of raw materials.
- (3) Raw materials referred to in paragraph 2 of this Article shall be only live animals, meat and milk.

#### **Geographical Indication**

##### **Article 4**

Geographical indication shall be the indication that identifies certain goods as goods originating from the territory of specific country, region or a locality within such territory, where specific quality, reputation or other characteristics of the goods can be essentially attributed to their geographical origin.

#### **Traditional and Historic Names**

##### **Article 5**

Where the requirements referred to in Articles 3 and 4 of this Law have been met, a name that is not the official geographical name of a country, a region or a locality that has become well-known

through a long-term use in trade as the traditional name of the product that originates from such region or a historical name of such region shall also be an indication of geographical origin.

### **Homonymic Names**

#### **Article 6**

Where the names of two or more places of origin of the product are identical or nearly identical in written or pronounced form (homonymic names), protection of such geographical names shall be granted to all interested persons that meet requirements provided for in this Law, based on the principles of just and equal treatment of producers in the market and truthful information of consumers, except where this could give the wrong impression to the public about the exact geographical origin of the product.

### **Names That Cannot be Protected**

#### **Article 7**

The following names shall not be protected by the indication of geographical origin:

- 1) Names contrary to public order or morals;
- 2) Names whose appearance or content may mislead consumers with respect to nature, origin, quality, manner of production or other characteristics of the product;
- 3) A name that is the exact name of the country, region or a locality of origin of the product, which causes wrong impression among consumers that the product originates from another country, region or a locality;
- 4) A name which, due to long-term use, became generic, i.e. usual name for a specific product;
- 5) A name that is not protected or ceased to be protected or ceased to be used in the county of origin;
- 6) Geographical indication origin for vine products that is identical to the name of the variety of grape that existed in the territory Montenegro before January 1, 1995.

## **II. GENERAL PROVISIONS ON THE PROTECTION PROCEDURE**

### **Protection of Indications of Geographical Origin**

#### **Article 8**

- (1) Legal protection of indications of geographical origin shall be exercised in the administrative procedure before the Intellectual Property Office of Montenegro (hereinafter referred to as: the responsible authority).
- (2) Decisions in the procedure referred to in paragraph 1 of this Article shall be final and against such decisions administrative dispute procedure may be initiated.

### **Fees and Costs of the Proceedings**

#### **Article 9**

- (1) Any fees and costs incurred in the administrative procedure before the responsible authority shall be collected in accordance with specific legislation that regulates administrative fees, costs of the proceedings and costs of providing information services.
- (2) The schedule of procedural fees and the fees for providing informational services shall be determined by the Government of Montenegro (hereinafter referred as: the Government).

### **Registers**

#### **Article 10**

- (1) The responsible authority shall keep the Register of Applications for Appellation of Origin, the Register of Applications for Registration of Geographical Indications, the Register of Applications for Recognition as Authorized Users of Appellation of Origin, the Register of Applications for Recognition as Authorized Users of Geographical Indications, the Register of

Appellations of Origin, the Register of Geographical Indications, the Register of Authorized Users of Appellations of Origin, the Register of Authorized Users of Geographical Indications.

- (2) The Registers referred to in the paragraph 1 of this Article shall have the status of public records and any interested person shall have the right to examine them in the presence of an official.
- (3) The files of registered geographical indications, except those protected by confidentiality, may be examined only in the presence of an official.
- (4) Upon the written request of an interested person and upon payment of the prescribed fee, the responsible authority shall issue copies of the documents and the corresponding attestations and certificates pertaining to facts entered in the official registers.
- (5) A content of the Registers referred to in paragraph 1 of this Article shall be regulated by a specific regulation.

#### **Availability of Documents**

##### **Article 11**

The responsible authority must make available its documents related to indications of geographical origin to any interested person.

#### **International Registration of the Indication of Geographical Origin**

##### **Article 12**

- (1) Authorized user of the indication of geographical origin or the applicant for the authorized user of the indication of geographical origin, as the case may be, may file an application for international registration in accordance with an international agreement binding on Montenegro.
- (2) An application for international registration referred to in paragraph 1 of this Article shall be filed to the responsible authority accompanied with a payment of prescribed fees.
- (3) Content of the application for international registration of the indication of geographical origin shall and the manner of the administration of the procedure by the responsible authority shall be regulated by a specific regulation.

#### **Representation**

##### **Article 13**

- (1) In the proceedings before responsible authority, any foreign natural or legal person must be represented by an agent listed in the Register of Agents kept by the responsible authority or by a local attorney at law.
- (2) Any natural or legal person that meets requirements established by the law that regulates patents shall be inserted in the Register of Agents.

### **III. PROCEEDINGS UPON THE APPLICATION TO REGISTER AN INDICATION OF THE GEOGRAPHICAL ORIGIN**

#### **Initiation of the Proceedings for the Registration of the Appellation of Origin or the Geographical Indication**

##### **Article 14**

- (1) The proceedings for the registration of the appellation of origin and geographical indication shall be initiated by the appropriate application.
- (2) The application for the registration of an appellation of origin or a geographical indication may be filed by the following persons:

- 1) Associations of natural and legal persons, commercial associations, associations of consumers, state and local authorities interested in protection of an appellation of origin or a geographical indication, within their activities;
  - 2) Foreign natural or legal persons, or foreign associations if an appellation of origin or a geographical indication were recognized in the country of origin, when it stems from the international agreements;
  - 3) Domestic natural and legal persons who, within a specified geographical area, produce products that bear the name of such geographical area, provided the following requirements are met;
    - That, at the time of filing of the application are the only producers or processors or service providers for whom the registration of an appellation of origin or a geographical indication is requested;
    - That the geographical area has the characteristics that significantly differ from those of the adjacent area or that the characteristics of the product differ from those of the product originating from the adjacent areas.
- (3) The application for registration of an appellation of origin or a geographical indication may be related to only one geographical indication or a name and to only one type of product.
- (4) The prescribed fee shall be payable for the application for the registration of the appellation of origin or a geographical indication.

### **Essential Elements of the Application**

#### **Article 15**

The following shall be the essential elements of the application:

- 1) A request for the registration of an appellation of origin or a geographical indication, as the case may be;
- 2) A description of the geographical area;
- 3) An information on specific characteristics of the product.

### **Request for the Registration of an Appellation of Origin Or a Geographical Indication**

#### **Article 16**

- (1) A request for registration of an appellation of origin or a geographical indication shall include:
- 1) Particulars of the applicant;
  - 2) Geographical name to be protected;
  - 3) Type of a product to which the geographical indication applies;
  - 4) The name of the region or a locality of origin of the product to be marked by a geographical name;
  - 5) A signature of the applicant;
  - 6) A proof that the prescribed fee has been paid.
- (2) Where the applicant is a foreign natural or legal person or a foreign association, the application referred in paragraph 1 of this Article shall be accompanied by a public document verifying that the appellation of origin or a geographical indication has been recognized in the country of origin.
- (3) An application for the registration of an appellation of origin, along with the elements referred to in paragraph 1 of this Article, shall also include an information on the organization authorized to control the quality of a product.
- (4) An application for the registration of a geographical indication, along with the elements referred to in paragraph 1 of this Article, may include the appearance of the geographical indication if comprising of words and possible figurative elements or figurative elements only, suitable to identify geographical origin of certain goods.

### **Description of the Geographical Area**

#### **Article 17**

Description of the geographical area shall comprise information on the geographical area where the product originates from and shall include specifics on administrative borders of such area, its geographical map and the information on human factors suitable to cause specific characteristics, quality and reputation of the concerned product.

### **Information on Specific Characteristics of the Product**

#### **Article 18**

- (1) In case of an application for the registration of a geographic indication, an information on specific characteristics of the product shall comprise detailed description of the production method of the product, precise indication of specific characteristics or quality of the product, including information on the reputation acquired, on persons authorized to use the geographical indication and conditions for such a use as well as rights and obligations of the user of the geographical indication.
- (2) In case of an application for the registration of an appellation of origin, an information on specific characteristics of the product shall be submitted in a form of a report on the manner of the production of the product and its specific characteristics and quality, which shall include *inter alia*:
  - 1) Particulars on the applicant for the registration of the appellation of origin and the person authorized to represent the applicant;
  - 2) Geographical name to be protected;
  - 3) An information on the usual manner and the method of production of the product concerned;
  - 4) An information on specific characteristics and the quality of the product;
  - 5) A proof that the quality control of the product has been performed by the authorized organization;
  - 6) Regulations on the method of marking the product;
  - 7) Regulations designating persons authorized to use the appellation of origin and the conditions for such a use;
  - 8) Regulations applicable to rights and obligations of a user of the appellation of origin;
  - 9) Any information under other regulations regulating the quality of a product.
- (3) A document referred to in paragraph 2, item 5 of this Article must not be issued earlier than 3 months before the filing date of the application

### **Filing Date of the Application**

#### **Article 19**

- (1) An application for the registration of an appellation of origin or a geographical indication shall be entered in the appropriate Register referred to in Article 10, paragraph 1 of this Law only if it contains essential elements referred to in Article 15 of this Law.
- (2) The filing date and the filing number shall be indicated on the application for the registration of an appellation of origin or a geographical indication filed directly to the responsible authority that contains essential elements referred to in Article 15 of this Law and the applicant shall be issued a certificate.
- (3) Where the application for the registration of an appellation of origin or a geographical indication does not contain essential elements referred to in Article 15 of this Law, responsible authority shall invite the applicant to rectify the situation within 30 days from the date the notification is served, with the warning that the application will be rejected.
- (4) If the applicant for the registration of an appellation of origin or a geographical indication rectifies the situation within the time limit, a filing date of the motion rectifying the situation shall be recognized, by a specific decision, as a filing date for such an application, and the application shall be entered in the appropriate register of applications.

- (5) If the applicant for the registration of an appellation of origin or a geographical indication does not rectify the situation within the time limit, responsible authority shall reject the application.

### **Sequence of Examination of the Applications**

#### **Article 20**

- (1) Applications shall be examined in the sequence determined by their filing dates.
- (2) Notwithstanding paragraph 1 of this Article, an application shall be decided upon in an expedited procedure:
  - 1) Where of the procedure before the court, customs authorities or inspectorate has been initiated, if the court, customs authorities or inspectorate so require;
  - 2) If the application for an international registration of an appellation of origin or a geographical indication has been filed.
- (3) In cases referred to in paragraph 2 of this Article a request for an expedite examination of the application shall be submitted and special fee paid.

### **Examination of the Completeness of an Application**

#### **Article 21**

- (1) The application for the registration of an appellation of origin or a geographical indication shall be complete if it contains all the elements referred to in Articles 16-18 of this Law.
- (2) If the responsible authority determines that the application for the registration of an appellation of origin or a geographical indication is not complete, it shall notify the applicant in writing, stating the reasons, and invite the applicant to regularize the application within 30 days.
- (3) Upon the substantiated request of the applicant for the for the registration of an appellation of origin or a geographical indication and upon the payment of the prescribed fee, responsible authority may extend the time limit referred to in paragraph 2 of this Article for as long as it finds appropriate, but not longer than 3 months.
- (4) If the applicant does not regularize the application within the given time limit or does not pay the regularization fee, responsible authority shall reject the application.
- (5) In the case referred to in paragraph 4 of this Article, if the prescribed fee has been paid, the applicant for the registration of an appellation of origin or a geographical indication may request the restoration to the previous condition, within 3 months from the date the decision to reject the application has been served.

### **Examination of the Registration Requirements**

#### **Article 22**

- (1) Where the application for the registration of an appellation of origin or a geographical indication is complete within the meaning of Article 21, paragraph 1 of this Law, the responsible authority shall examine whether the requirements for the registration of an appellation of origin or a geographical indication have been met.
- (2) During the examination referred to in paragraph 1 of this Article, where the applicant is a domestic person or association of persons referred to in Article 14, paragraph 2, items 1 and 3 of this Law, the responsible authority shall obtain an opinion of the state administrative authority responsible for the subject of examination, which shall be taken into account when deciding on the application of the member state where an appellation of origin or a geographical indication for the registration of an appellation of origin or a geographical indication.

**Decision to Deny the Registration  
Article 23**

- (1) Where the responsible authority determines that the application for the registration of an appellation of origin or a geographical indication does not meet requirements for the registration under this Law, the responsible authority shall notify the applicant in writing stating the reasons for denial to register an appellation of origin or a geographical indication, as the case may be, and inviting him to comment those reasons within 60 days.
- (2) Upon the substantiated request of the applicant and the payment of the prescribed fee, the responsible authority may extend the time limit referred to in paragraph 1 of this Article for as long as it finds appropriate, but not longer than 3 months.
- (3) The responsible authority shall decide to deny the registration of an appellation of origin or a geographical indication if the applicant for the registration of an appellation of origin or a geographical indication does not comment reasons referred to in paragraph 1 of this Article.

**Conversion of the Application for the Registration of an Appellation of Origin Into the  
Application for the Geographical Indication and Vice Versa  
Article 24**

- (1) Upon the request of the applicant for the registration of an appellation of origin or a geographical indication submitted before the end of the proceedings and upon the payment of the prescribed fee, application for the registration of an appellation of origin can be converted into the application for the registration of a geographical indication, and vice versa.
- (2) In the process of examination of the fulfillment of the requirements for the registration of an appellation of origin, where the requirements for the registration of an appellation of origin have not been met but the requirements for the registration of a geographical indication have been met, the responsible authority shall suggest to the applicant for the registration of an appellation of origin to convert such application into the application for the registration of a geographical indication.
- (3) In the process of examination of the fulfillment of the requirements for the registration of a geographical indication, where the requirements for the registration of a geographical indication have not been met but the requirements for the registration of an appellation of origin have been met, the responsible authority shall suggest to the applicant for the registration of a geographical indication to convert such application into the application for the registration of an appellation of origin.
- (4) The responsible authority shall issue an individual decision on conversion of the appropriate application.

**Decision to Register and Entry into the Appropriate Register  
Article 25**

- (1) Where the responsible authority finds that the application for the registration of an appellation of origin or a geographical indication meets the requirements under this Law, the responsible authority shall issue a decision on the registration of an appellation of origin or a geographical indication, as the case may be, and such an appellation of origin or a geographical indication, along with the prescribed bibliographical data, shall be entered into the Register of the Appellations of Origin or the Register of Geographical Indications, as the case may be.
- (2) Registered appellation of origin or a geographical indication shall be published in the official publication of the responsible authority.

**Period of Validity of an Appellation of Origin and a Geographical Indication  
Article 26**

Period of validity of the registered appellation of origin or a geographical indication shall not be limited.

**IV. PROCEEDINGS UPON THE APPLICATION FOR THE RECOGNITION OF THE STATUS OF THE AUTHORIZED USER OF THE INDICATION OF THE GEOGRAPHICAL ORIGIN**

**Initiation of the Proceedings for the Recognition of the Status of the Authorized User**

**Article 27**

- (1) The procedure for recognizing the status of an authorized user of an appellation of origin or a geographical indication shall be initiated by filing the application for recognizing the status of an authorized user of an appellation of origin or a geographical indication.
- (2) The application for recognizing the status of an authorized user of an appellation of origin or a geographical indication may be submitted by natural or legal persons who, within the geographical area, produce products marked by the name of such geographical area, as well as associations of such natural or legal persons.
- (3) Prescribed fee shall be payable for filing of an application for recognition of a status of an authorized user of an appellation of origin or a geographical indication.

**Essential Elements of the Application**

**Article 28**

- (1) Essential elements of the application for recognition of a status of an authorized user of an appellation of origin or a geographical indication shall be the following:
  - 1) Request for recognition of a status of an authorized user of an appellation of origin or a geographical indication;
  - 2) Proof of particular activity performed within the particular geographical area.
- (2) A proof that the quality control of the product has been performed by the authorized organization named in the application for the registration of the appellation of origin shall also be essential element of the application for recognition of a status of an authorized user of an appellation of origin

**Request for Recognition of a Status Of an Authorized User**

**Article 29**

- (1) The request for recognition of a status of an authorized user of an appellation of origin or a geographical indication shall contain:
  - 1) Particulars of the applicant;
  - 2) Geographical name to be protected;
  - 3) Type of a product to which the geographical name applies;
  - 4) Name of the region or locality the product originates from;
  - 5) Manner of marking of a product;
  - 6) Appearance of an appellation of origin or a geographical indication;
  - 7) Indication of specific characteristics of the product;
  - 8) Signature of the applicant;
  - 9) Proof that the prescribed fee has been paid.
- (2) In addition to elements referred to in paragraph 1 of this Article, the request for recognition of a status of an authorized user of an appellation of origin shall contain the name of the organization authorized to control the quality of the product.



**Proof of the Specific Activity Performed  
Within the Specific Region  
Article 30**

Appropriate certificates and decisions issued by competent authorities or any other documents adequately substantiating relevant facts, shall be deemed to be the proof of specific activity performed or specific product produced within specific region.

**The Proof of Quality Control of the Product Performed  
Article 31**

- (1) Any document (attestation, certificate, credential or report) confirming that the quality control of the product has been performed, issued by the authorized organization named as the organization responsible to perform quality control in the request for the registration of the appellation of origin and the request for the recognition of the status of an authorized user of the appellation of origin, which verifies that the product subject to control has all the specific characteristics listed in the report on the manner of production of the product and specific characteristics and quality thereof referred to Article 18, paragraph 2 of this Law, shall be deemed to be the proof that the quality control of the product has been performed.
- (2) The document referred to in paragraph 1 of this Article shall be valid for six months.

**Filing Date of the Application  
Article 32**

- (1) The application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication shall be entered in the appropriate register referred to in Article 10, paragraph 1 of this Law only if it contains essential elements referred to in Article 28 of this Law.
- (2) The filing date and the filing number shall be indicated on the application referred to in paragraph 1 of this Article filed directly to the responsible authority that contains essential elements referred to in Article 28 of this Law and the applicant shall be issued a certificate.
- (3) Where the application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication does not contain essential elements referred to in Article 28 of this Law, responsible authority shall invite the applicant to rectify the situation within 30 days from the date the information was received, with the warning that the application will be rejected.
- (4) If the applicant for the recognition of a status of an authorized user of an appellation of origin or a geographical indication rectifies the situation within the time limit, a filing date of the motion rectifying the situation shall be recognized, by a specific decision, as a filing date for such an application, and the application shall be entered in the appropriate register of applications.
- (5) If the applicant for the recognition of a status of an authorized user of an appellation of origin or a geographical indication does not rectify the situation within the time limit, the responsible authority shall reject the application.

**Sequence of Examination of Applications  
Article 33**

- (1) Applications shall be examined in the order determined by their filing dates.

**Examination of Completeness of the Application  
Article 34**

- (1) An application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication shall be complete if it contains all the elements referred to in Articles 29-31 of this Law.

- (2) If the responsible authority determines that the application referred to in paragraph 1 of this Article is not complete, it shall notify the applicant in writing, stating the reasons, and invite the applicant to regularize the application within 30 days.
- (3) Upon the substantiated request of the applicant for the recognition of the status of an authorized user of an appellation of origin or a geographical indication and the payment of the prescribed fee, responsible authority may extend the time limit referred to in paragraph 2 of this Article for as long as it finds appropriate, but not longer than 3 months.
- (4) If the applicant does not regularize the application within the given time limit or does not pay the regularization fee, responsible authority shall reject the application.
- (5) In the case referred to in paragraph 4 of this Article, if the prescribed fee has been paid, the applicant for the recognition of a status of an authorized user of an appellation of origin or a geographical indication may request the restoration to the previous condition, within 3 months from the date the decision to reject the application has been served.

**Examination of the Requirements for the  
Recognition of a Status of an Authorized User  
Article 35**

Where the application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication is complete in accordance with Articles 29-31 of this Law, the responsible authority shall examine whether the requirements for the recognition of the status of an authorized user of an appellation of origin or a geographical indication have been met.

**Decision to Deny the Status of an Authorized User  
Article 36**

- (1) Where the responsible authority determines that the application for recognition of the status of an authorized user of an appellation of origin or a geographical indication does not meet requirements for the recognition of the status of an authorized user of under this Law, the responsible authority shall notify the applicant in writing, stating the reasons for denial to recognize the status of an authorized user of an appellation of origin or a geographical indication and inviting him to comment those reasons within 60 days.
- (2) Upon the substantiated request of the applicant for the recognition of the status of an authorized user of an appellation of origin or a geographical indication and the payment of the prescribed fee, responsible authority may extend the time limit referred to in paragraph 1 of this Article for as long as it finds appropriate, but not longer than 3 months.
- (3) The responsible authority shall decide to deny the recognition of a status of an authorized user of an appellation of origin or a geographical indication if the applicant does not comment reasons referred to in paragraph 1 of this Article.

**Conversion of the Application for the Recognition of a Status of the Authorized User of  
an Appellation of Origin Into the Application for the Recognition of a Status of an  
Authorized user the Geographical Indication and Vice Versa  
Article 37**

- (1) Where in the proceedings upon the application for the recognition of a status of an authorized user pursuant Article 24 of this Law, a conversion of an application for the registration of the appellation of origin into the application for the registration of the geographical indication has taken place, the applicant for the recognition of the status of an authorized user of an appellation of origin or a geographical indication that has been converted shall, along with the payment of the prescribed fee, submit the request to convert the application for the recognition of a status of an authorized user of the appellation of origin into the application for the recognition of status of an authorized user of a geographical indication, or vice versa.
- (2) The responsible authority shall notify without delay all the applicants for the recognition of a status of an authorized user of an appellation of origin or a geographical indication that the

request for the conversion of an appellation of origin or a geographical indication has been submitted pursuant Article 24 of this Law.

- (3) The responsible authority shall issue an individual decision on conversion of the appropriate application.

**Decision on Payment of the Fee for the Recognition  
Of a Status of an Authorized User**

**Article 38**

- (1) Where the application for the recognition of a status of an authorized user of an appellation of origin or a geographical indication meets the requirements under this Law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication, the responsible authority shall invite the applicant to pay the fee for the recognition of the status of an authorized user of an appellation of origin or a geographical indication for the first three years and the costs of publication of the information on the authorized user of an appellation of origin or a geographical indication, and to furnish evidence of payment.
- (2) Where the applicant does not furnish the evidence of payment referred to in paragraph 1 of this Article within 30 days, the application shall be considered withdrawn, and the responsible authority shall declare withdrawal by an individual decision.
- (3) In the case referred to in the paragraph 2 of this Article, an applicant for the for the recognition of a status of an authorized user of an appellation of origin or a geographical indication may request the restoration to the previous condition, within 3 months from the date the decision to reject the application has been served.

**Decision to Recognize a Status of an Authorized User  
and Entry Into the Appropriate Register**

**Article 39**

Where the applicant for the recognition of a status of an authorized user of an appellation of origin or a geographical indication furnishes the evidence of payments referred in Article 38, paragraph 1 of this Law, the responsible authority shall issue a decision on recognition of the status of an authorized user of an appellation of origin or a geographical indication and the recognized status of the applicant, along with the prescribed bibliographical data, shall be entered into the Register of Authorized Users of Appellations of Origin or the Register of Authorized Users of Geographical Indications, as the case may be.

**Issuance of the Certificate and Publication of the Information  
Of the Status of the Authorized User**

**Article 40**

- (1) An authorized user of an appellation of origin or a geographical indication shall be issued a certificate verifying the status of an authorized user of an appellation of origin or a geographical indication and the prescribed information shall be published in the official publication.
- (2) The content of the certificate verifying the status of an authorized user referred to in paragraph 1 of this Article shall be regulated by a specific regulation.

**Validity of the Status of the Authorized User**

**Article 41**

- (1) Status of the authorized user of an appellation of origin or a geographical indication shall be valid for three years as of the date of entry into the Register of Authorized Users of Appellations of Origin or the Register of Authorized Users of Geographical Indications, as the case may be.
- (2) Upon the application of the authorized user of an appellation of origin or a geographical indication, accompanied with the evidence that requirements prescribed by this Law have been met and that the prescribed fee has been paid, the status of an authorized user can be

renewed perpetually, for as long as the appropriate appellation of origin or a geographical indication is valid.

- (3) The content of the application referred to in paragraph 2 of this Article shall be regulated by a specific regulation.

## **V. CONTENT AND THE SCOPE OF THE RIGHT OF THE USER OF THE INDICATION OF THE GEOGRAPHICAL ORIGIN**

### **Use of a Registered Appellation of Origin or a Geographical Indication**

#### **Article 42**

- (1) Registered appellation of origin or geographical indication may be used only by the persons who were recognized the status of an authorized user of such appellation of origin or geographical indication, which were entered in the appropriate Register.
- (2) Authorized users of an appellation of origin or a geographical indication shall have the right to use the appellation of origin or the geographical indication to mark the product that the appellation of origin or the geographical indication has been related to.
- (3) Authorized users shall have the exclusive right to mark their products with the indication "controlled appellation of origin".
- (4) Rights referred to in paragraphs 2 and 3 of this Article shall include the right to use an appellation of origin or a geographical indication on packaging, catalogues, prospectuses, advertisements, posters and other forms of offer, on instructions, invoices, business correspondence and other forms of business documents, and to import or export goods bearing such appellation of origin or geographical indication.

### **Prohibited Actions**

#### **Article 43**

Any person who has not been recognized as an authorized user of an appellation of origin or a geographical indication shall not be allowed to use registered appellation of origin or geographical indication, their translation, transcription or transliteration, regardless of the font or the color used, or expressed in any other manner, to mark products, where the appellation of origin or the geographical indication is supplemented with the words such as: "kind", "type," "fashion," "imitation", "by the process" and the like, even where the geographical origin of the product is correct.

### **Relation to the Previously Registered Trademark**

#### **Article 44**

- (1) The provisions of this Law shall not prejudice the conditions for the registration, validity of the registration or the right to use the trademark which is identical or similar to a registered geographical indication or an appellation of origin, if the application for the registration of the concerned trademark has been done in a good faith or the trademark rights have been acquired by the use in good faith prior to the filing of the application for the registration of a geographical indication or an appellation of origin, as the case may be.
- (2) A geographical indication or an appellation of origin shall not be registered where, in the light of a trademark's reputation and renown and the length of time it has been used, such registration could mislead the consumer as to the true identity and characteristics of the product.

### **Use of the Personal Name**

#### **Article 45**

The provisions of this Law shall in no way influence any person to use his/her personal name in the commercial activities, or that of his/her predecessor, except where such name is used in such a manner as to deceive consumers.

### **Prohibition of Transfer**

#### **Article 46**

- (1) Registered appellation of origin or geographical indication shall not be subject to the contract on transfer of rights, license agreement, pledge, franchise or the like.
- (2) Where the registered appellation of origin or geographical indication is subject of the application for the registration of a trademark or is a registered trademark, such a trademark cannot be transferred, assigned, pledged or the like.

## **VI. CANCELLATION OF THE DECISION ON REGISTRATION**

### **Conditions for Cancellation of the Decision**

#### **Article 47**

Upon the written application of an interested person, the responsible authority may cancel the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user, if it determines that requirements for the registration of an indication of geographical origin or requirements for the recognition of the status of an authorized user have not been met at the time when the decision was issued.

### **Application for the Cancellation of the Decision**

#### **Article 48**

- (1) The application referred to in Article 47 of this Law shall be submitted in two copies and shall include:
  - 1) Particulars of the applicant;
  - 2) Indication that the cancellation of the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user is being requested;
  - 3) Registration number of the indication of geographical origin whose cancellation is being requested or registration number of the indication of geographical origin against whose authorized user the request has been submitted;
  - 4) Particulars of the authorized user of the indication of geographical origin whose cancellation is being requested;
  - 5) Reasons for the cancellation;
  - 6) Evidence supporting the reasons;
  - 7) Power of attorney, where the proceedings are initiated through an attorney;
  - 8) Evidence that the prescribed application fee has been paid.
- (2) If the application to cancel the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user does not meet requirements referred to in paragraph 1 of this Article, responsible authority shall invite the applicant in writing to regularize the application within 30 days from the date the notification has been served.
- (3) If the applicant does not regularize the application within the time limit referred in paragraph 2 of this Article, the responsible authority shall reject the application.

### **Proceedings upon the Complete Application**

#### **Article 49**

- (1) Where the application referred to in Article 47 of this Law is complete, the responsible authority shall serve it on the opposing party and invite it to respond within 30 days from the date the invitation has been served.

- (2) The responsible authority may schedule the hearing in the proceedings initiated upon the application referred to in Article 47 of this Law.
- (3) If the applicant for the cancellation of the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user renounces the application, the responsible authority may continue the proceedings *ex officio*.
- (4) Provisions of Articles 23 and 36 of this Law shall apply *mutatis mutandis* to the proceedings upon the application for the cancellation of the decision to register an indication of geographical origin.

#### **Article 50**

- (1) Upon the completion of the proceedings referred to in Article 47 of this Law, the responsible authority may issue or refuse to issue, a decision to cancel the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user.
- (2) Three months after the decision to cancel the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user has become final and enforceable, the responsible authority shall publish prescribed information on such a decision in its official publication.

#### **Article 51**

Cancellation of the decision to register an indication of geographical origin or a decision to recognize the status of an authorized user shall not have the effect on any court decision related to the violation of rights that are final and enforceable at the time of issuance of such a decision, provided that the plaintiff, i.e. authorized user of the indication of geographical origin has acted in good faith.

### **VII. TERMINATION OF THE INDICATION OF GEOGRAPHICAL ORIGIN**

#### **Termination of the Appellation of Origin or Geographical Indication In the Country of Origin**

##### **Article 52**

- (1) Registered appellation of origin or registered geographical indication shall cease to be valid when its protection in the country of origin terminates.
- (2) Upon the application of an interested person accompanied with the certificate of the competent authority of the country of origin of an appellation of origin or a geographical indication, or upon an information received from the competent authority of the country of origin of an appellation of origin or a geographical indication that the protection of such an appellation of origin or a geographical indication has been terminated in the country of origin, the responsible authority shall issue a decision that will cease validity of an appellation of origin or a geographical indication.
- (3) The responsible authority shall enter a decision referred to in paragraph 2 of this Article into the appropriate register, and shall publicize prescribed information on the termination of an appellation of origin or a geographical indication, as the case may be.

#### **Termination of the Geographical Indication Based on the Court Decision**

##### **Article 53**

- (1) Any interested person may file a suit before the competent court in order to establish that certain geographical indication became generic, i.e. usual name for certain product.
- (2) Registered geographical indication shall cease to be valid based on the final and enforceable decision of the court establishing that it became generic, i.e. usual name for certain product.

- (3) Registered geographical indication that is registered and protected in its country of origin as an appellation of origin, cannot be declared as generic, i.e. usual name for certain product, for as long as such protection is valid in the country of origin.
- (4) After the responsible authority receives the court decision referred to in paragraph 2 of this Article, it shall enter the decision in the appropriate register and publish the prescribed information on termination of the geographical indication in its official publication.

## **VIII. TERMINATION AND REVOCATION OF THE STATUS OF AN AUTHORIZED USER**

### **Termination of the Status of an Authorized User of an Appellation of Origin or a Geographical Indication Article 54**

Status of an authorized user of an appellation of origin or a geographical indication shall be terminated before the time referred in Article 41, paragraph 1 of this Law lapses, if:

- 1) An authorized user of an appellation of origin or a geographical indication renounces his right - on the first day subsequent to the day on which the responsible authority receives the motion of renunciation;
- 2) An appellation of origin or a geographical indication ceased to be valid based on the decision of the responsible authority pursuant Articles 52 or 53 of this Law - on the day set in the decision concerned;
- 3) A legal person who is the authorized user ceased to exist or a or if the natural person who is the authorized user has died - on the day the legal person ceased to exist or on the day of death, except where the right has been transferred to the successors in right of the legal person.

### **Revocation of the Decision to Recognize the Status of an Authorized User Article 55**

- (1) Upon the application of an interested person, the responsible authority may revoke a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication if it determines that the conditions prescribed by this Law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication, have ceased to exist.
- (2) In the proceedings initiated upon the application for the revocation of a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication, an authorized user of an appellation of origin or a geographical indication must prove the existence of the conditions prescribed by the law for the recognition of the status of an authorized user of an appellation of origin or a geographical indication.
- (3) If the applicant for the revocation of a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication renounces the application, the responsible authority may continue the proceedings *ex officio*.
- (4) Provisions of Article 36 of this Law shall apply *mutatis mutandis* to the proceedings initiated upon the application for the revocation of a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication.

The status of a person inserted in the appropriate register as the authorized user of an appellation of origin or a geographical indication shall be terminated on the first day subsequent to the day the decision to revoke a decision to recognize the status of an authorized user of an appellation of origin or a geographical indication became final and enforceable.

## **IX. CIVIL LAW PROTECTION**

### **Protection in the Event of Infringement of Registered Indication of Geographical Origin Article 56**

- (1) In the event of infringement of a registered indication of geographical origin, an action may be filed and the plaintiff may request the following:
  - 1) Determination of the infringement of an appellation of origin or a geographical indication;
  - 2) Prohibition of acts that infringe an appellation of origin or a geographical indication;
  - 3) Reimbursement of damages and justifiable legal costs and expenses;
  - 4) Publication of the court decision at the expense of the defendant;
  - 5) Confiscation and destruction, without any compensation, of any products created or obtained by infringing an appellation of origin or a geographical indication;
  - 6) Confiscation and destruction, without any compensation, of the materials and objects (equipment, tools) predominantly used to manufacture objects that infringe an appellation of origin or a geographical indication;
- (2) If the infringement of an appellation of origin or a geographical indication was intentionally or by gross negligence, the plaintiff may request from the defendant the compensation amounting up to three times of the amounts of direct damage and lost profits combined.
- (3) In considering the claims referred to in paragraph 1, items 5 and 6 of this Article, the court shall take into account the need to maintain proportionality between the gravity of the infringement and the measures ordered, as well as the interests of third parties.
- (4) Appropriate provisions of the Law of Obligations shall apply to those issues concerning damages for infringement of rights that are not provided for by this Law

### **Infringement of Registered Appellation of Origin or Geographical Indication Article 57**

- (1) Any unauthorized use of protected appellation of origin or a geographical indication by any economic operator within the meaning of Articles 42 and 43 of this Law shall constitute an infringement of an appellation of origin or a geographical indication.
- (2) The imitation of the registered appellation of origin or geographical indication shall also constitute an infringement of an appellation of origin or a geographical indication.

### **Right to File an Action Article 58**

- (1) An action for infringement of an appellation of origin or a geographical indication referred to in Article 56 of this Law may be filed by any person referred to Article 14, paragraph 2 of this Law, authorized user of an appellation of origin or a geographical indication and public or state prosecutor.
- (2) Where the proceedings referred to Articles 47, 52, 53 and 55 of this Law have been initiated before the responsible authority or the court, the court deciding the case based on the action referred to in Article 56 of this Law shall delay the proceedings pending the final decision of the responsible authority or the court.

### **Time Limit to File an Action Article 59**

An action for the infringement an appellation of origin or a geographical indication may be filed within a period of three years as of the day on which the plaintiff became aware of the infringement and the identity of the infringer, but not later than five years as of the day of the first infringement.



## **X. PROVISIONAL MEASURES**

### **Provisional Measure of Seizure or Removal from the Circulation**

#### **Article 60**

- (1) Upon the request of the plaintiff who makes it probable that his appellation of origin or a geographical indication is or shall be infringed, the court may, ending a final decision, issue a provisional measure of:
  - 1) Confiscation and/or withdrawal from the market of products made or obtained by infringement of an appellation of origin or a geographical indication;
  - 2) Confiscation and/or withdrawal from the market of implements (equipment, tools) predominantly used in the production of products infringing appellation of origin or a geographical indication;
  - 3) Prohibition of the further performance of acts infringing appellation of origin or a geographical indication.
- (2) A request for the grant of a provisional measure may be filed even before filing an action, provided that the action is filed not later than 30 days from the execution of the provisional measure.
- (3) Where there is risk of irreparable harm being caused or where there is demonstrable risk of evidence being destroyed, the court may order a provisional measure without the defendant being heard, whereas the defendant must be notified of the execution of the provisional measure without delay, but not later than five days from the execution of the provisional measure.
- (4) The court may instruct the applicant to furnish additional evidence of the infringement of appellation of origin or a geographical indication or of the imminent risk of the infringement thereof, and order him to provide a security in order to prevent any abuse.
- (5) An appeal against the court decision on the provisional measure referred to in paragraph 1 of this Article shall not stay the execution of the decision.
- (6) Appropriate provisions of the Law on Enforcement Procedure shall apply to those issues concerning the institution of provisional measures that are not provided for by this Law

### **Securing of Evidence**

#### **Article 61**

- (1) At the request of the plaintiff who makes it credible that his/her right has been infringed, and that there is a reasonable doubt that the evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order a provisional measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.
- (2) For the purposes of Paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, books, documents, databases, etc., as well as the seizure of documents and infringing goods, interrogation of witnesses and expert witnesses
- (3) The court order for measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.
- (4) Provisional measure to secure evidence may be requested even before filing an action, provided that the action is filed not later than 30 days from the execution of the provisional measure.

### **Obligation to Provide Information**

#### **Article 62**

- (1) A court may order a person responsible for an infringement of the registered appellation of origin or geographical indication to provide information about any third parties who have participated in the infringement of the appellation of origin or geographical indication and about their distribution channels.

- (2) Person referred to in paragraph 1 of this Article who does not fulfill the obligation of providing information shall be held liable for any damages arising therefrom.

## **XI. PENAL PROVISIONS**

### **Offences**

#### **Article 63**

- (1) Any legal entity that does not have a status of the authorized user of an appellation of origin or registered geographical indication, that uses a registered appellation of origin or registered geographical indication, their translation, transcription or transliteration, shall be fined € 1,300 – € 20,000 (Article 43).
- (2) Any responsible person in the legal entity shall be fined € 60 – € 1,500 for the offence referred to in paragraph 1 of this Article.
- (3) Any entrepreneur shall be fined € 1,300 – € 6,000 for the offence referred to in paragraph 1 of this Article.

#### **Article 64**

- (1) Any legal entity who engages in representation in exercising the rights stemming from this Law, and who is not registered in the Register of Representatives maintained by the responsible authority shall be fined € 1,300 – € 15,000 (Article 13).
- (2) Any responsible person in the legal entity and any natural person shall be fined € 60 – € 600 for the offence referred to in paragraph 1 of this Article
- (3) Any entrepreneur shall be fined € 1,300 – € 6,000 for the offence referred to in paragraph 1 of this Article.

## **XII. TRANSITIONAL AND FINAL PROVISIONS**

### **Article 65**

Protection of indications of geographical origin in accordance with Article 33 of the Stabilization and Association Agreement between the European Communities and their Member States of the one part and the Republic of Montenegro, of the other part ("Official Gazette of Montenegro" No. 7/2007) shall be provided in the procedures and the manner prescribed by this Law.

### **Article 66**

Implementing regulations for this Law shall be enacted not later than 3 months from the day on which this Law enters into force.

### **Article 67**

On the day this Law comes into effect, the Law on Indications of Geographical Origin (Official Gazette of Serbia and Montenegro No. 20/06) shall cease to be effective.

### **Article 68**

- (1) This Law shall enter into force on the eighth day after the day of its publication in the "Official Gazette of Montenegro".
- (2) This Law shall come into effect on September 1, 2008.
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