

## **Opinion on the Draft Law on Amendment and Supplement to the Marks and Geographical Indications Act**

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Dear ladies and gentlemen,

A fundamental principle in the field of Intellectual Property is to maintain a balance between the rights and the interests of three parties - the State, the right-holders and between the consumers (the society as a whole). I believe that the proposed amendment to the MGIA, violates this balance to the detriment of the holders of industrial property rights and to the consumers.

The bill provides for termination of already granted by law rights to individuals on registered geographical indications, without any measures to limit the negative impact of this on consumers and right-holders. Like any industrial property right, the geographical indications are a tool to guide consumers on the qualities and characteristics of a product with the aim of making them an informed consumer decision. With the sudden and automatic drop-out of this tool, after it has existed for a very long period of time and the society has become accustomed to it, are created prerequisites for disinformation and for misleading the consumers, as well as for unconscientious use of the already established reputation of certain products.

In its proposed state, the bill is essentially an expropriation of legally acquired property by the State. With the entry into force of the Lisbon Treaty on 02.12.2009, the Charter of Fundamental Rights of the EU becomes mandatory for all EU Member States. Art. 17, paragraph 2 of the Charter explicitly obliges all EU Member States, including The Republic of Bulgaria, to protect the intellectual property rights (as a type of property) and does not allow in any way their forcible deprivation. In its proposed state, the bill violates the ban on property deprivation. It should be noted that the EU Charter of Fundamental Rights takes precedence over both: the secondary EU legislation (regulations and directives) and above the domestic law of the Member States. The Charter is a legislative act, which the Member States must always and unconditionally follow, even when transposing EU acts on a national level.

Last but not least, it should be borne in mind that, apart from the Lisbon Agreement on the Protection of Designations of Origin and their International Registration, the Republic of Bulgaria is also a party to the Agreement on Trade Related Aspects of Intellectual Property Rights (so-called TRIPS Agreement) of the World Trade Organization (WTO). By virtue of this agreement, the Republic of Bulgaria has undertaken, as an independent party to the agreement, to establish a legal regime for the protection of geographical indications for all products without exception. Moreover, the agreement explicitly aims to avoid any instances of misleading the consumers - Art. 22, item 2 of the agreement. In its proposed state, the bill contradicts the above obligations of the Republic of Bulgaria and creates prerequisites precisely for misleading consumers. In the absence of clear and convincing motives, and without measures to limit its negative effects - only some of which are mentioned above - I believe that the bill cannot be supported.

Sincerely,

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