



# Q&A Manual European Legislation on Geographical Indications

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**Q&A Manual**  
**European Legislation on Geographical**  
**Indications**

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This publication takes the form of questions and answers to serve as a handbook for right holders of Geographical Indications (GIs) and stakeholders involved in the development of GI products in Europe. This Q&A Manual addresses key issues often raised and covers the legislative situation in China, the various definitions of GIs, registration procedures, the difference between trademarks and GIs, the use of GIs and GI logos as well as how GIs are protected, supervised and administered.

It is undertaken in the framework of the EU-China IPR2 Project. Since its launch in 2007, IPR2 has developed a series of capacity building activities on Geographical Indications (GIs) in China and Europe to support Chinese and European stakeholders with references on GI best practice and experience. This manual specifically builds on the work undertaken by the EU-China Trade Project (2004-2008) [www.euctp.org](http://www.euctp.org).

IPR2 is a partnership project between the European Union and the People's Republic of China on the protection of intellectual property rights in China. This is done by providing technical support to, and building the capacity of the Chinese legislative, judicial and administrative authorities in administering and enforcing intellectual property rights; improving access to information for users and officials; as well as reinforcing support to right holders. IPR2 targets the reliability, efficiency and accessibility of the IP protection system, aiming at establishing a sustainable environment for effective IPR enforcement in China.

For further information visit [www.ipr2.org](http://www.ipr2.org) or contact [info@ipr2.org](mailto:info@ipr2.org).

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## Abbreviations

AO	Appellation of Origin
ACTA	Anti-Counterfeiting Trade Agreement
DG AGRI	Directorate General Agriculture
EC	European Community
EU	European Union
EUCTP	EU-China Trade Project
GI	Geographical Indication
INAO	Institut national des appellations d'origine
OJEU	Official Journal of the European Union
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation



## Definitions of GIs in the EU

### What are the products eligible for GI protection in the EU?

The following categories of products can be protected in the EU as Geographical Indication products:

- Wines under EC Regulation n°1234/2007<sup>1</sup>, which incorporates EC Regulation 479/2008<sup>2</sup>
- Spirits under EC Regulation n° 110/2008<sup>3</sup>
- Agricultural and foodstuff products under EC Regulation 510/2006<sup>4</sup>.

### Are all food and agricultural products eligible to protection?

No, not all food and agricultural products are within the scope of Regulation 510/2006. This Regulation covers:

- Agricultural products intended for human consumption, referred to in Annex I of the EC Treaty (basic agricultural products, i.e. meat, dairy and fish products, fruits and vegetables);
- Some foodstuffs referred in Annex I of the Regulation (beers, beverages made from plant extracts, pastas, breads and pastries, gums and resins, mustard paste and salt);
- Agricultural products, not intended for human consumption, listed in Annex II of the Regulation (hay, essential oils, cork, cochineal, flowers and ornamental plants, wool, wicker, scutched flax and cotton);
- Wine vinegar (as an exception not covered by wines and spirits).

Regulation 510/2006 does not apply to pre-cooked meals, prepared condiment sauces, soups and broths, ice cream and sorbets, chocolate (and other food preparations containing cocoa).

Regulation 510/2006 was amended by Regulation 417/2008<sup>5</sup> of 8 May 2008 to incorporate salt in Annex I of Regulation and cotton in Annex II.

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<sup>1</sup> See consolidated version of Regulation 1234/2007 dated 1.1.2011:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2007R1234:20110101:EN:PDF/2007>

<sup>2</sup> See consolidated version of Regulation 479/2008 dated 7.2.2009 :  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2008R0479:20090207:EN:PDF>

<sup>3</sup> See consolidated version of Regulation 110/2008 dated 20.1.2009 :  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2008R0110:20090120:EN:PDF>

<sup>4</sup> See consolidated version of Regulation 510/2006 dated 29.5.2008 :  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006R0510:20080529:EN:PDF>

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:125:0027:0027:EN:PDF>

## **Are non-food products eligible to GI protection?**

Yes, certain agricultural non-food products are within the scope of Regulation 510/2006 (see: Annex II: hay, essential oils, cork, cochineal, flowers and ornamental plants, wool, wicker, scutched flax and cotton).

However, most non-agricultural products or industrial goods (like textiles, wood, ceramics, etc.) are outside the scope of this Regulation. Some Member States of the EU provide for the protection of these products as GIs through specific legal instruments (see below page 14).

## **Can the name of a variety/breed be registered?**

As a general rule, when there is no confusion possible for consumers between the names of the GI and the name of a plant variety or an animal breed, the registration of a GI is possible.

Examples of such GI products that have been registered:

- The French cheese name 'Abondance' which is also the name of an animal breed was registered as a PDO<sup>6</sup>.
- The Portuguese PDO 'Carnalentejana' for meat.<sup>7</sup>

## **Can a live animal or parts of an animal (like liver, meat...) be registered?**

Yes, Regulation 510/2006 provides for the protection of names of agricultural products intended for human consumption, including 'live animals' and 'meat and edible meat offal'. However, if a GI name is intended to be registered for a live animal it should not be confused with the name of the animal breed. Usually, GIs are registered for different types of meat, for example Scotch Beef, Welsh Lamb, Agneau du Limousin, Porc de Normandie, Carne Maronesa, etc.

## **Can GI cover products with different presentations? For example, can a fruit name be registered as a GI covering two 'categories', i.e. fresh and dried fruit?**

Yes, but it must be clearly indicated in the product's specification provided for registration of the GI. The GI name can be reserved to the product being fresh or whole and, at the same time, can be allowed to designate the product in a further stage of production (processed, cut, sliced, grated and/or packaged, as well as any specific conditions required), which has to be clearly specified.

Example: the French PGI 'Anchois de Colliure' indicates that it can be sold only in the form of:

- salted anchovies;

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<sup>6</sup> Commission Regulation 1107/96 of 12 June 1996 on the registration of GIs and designations of origin under the procedure laid down in Article 17 of Council Regulation 2081/92, OJ L 148, 21 June 1996, pp. 1-10.

<sup>7</sup> Commission Regulation 1107/96 of 12 June 1996 with corrigendum added, OJ L 290, 13 November 1996, p. 18.

- anchovy fillets in brine, or
- anchovy fillets in oil<sup>8</sup>.

## How are GI products protected in the EU?

In the EU, GI protection is provided by several legal acts (Regulations) depending on the type of product involved: agricultural products and foodstuffs, or wines, or spirits, or handicraft or industrial products. In all cases, Member States are responsible for the prevention of unlawful use within the Community of protected geographical designations.

### How are GI food and agricultural products protected?

These products are protected by **Council Regulation 510/2006** on the protection of geographical indications (PGIs) and designations of origin (PDOs) for agricultural products and foodstuffs. Commission Regulation 1898/2006 lays down detailed rules on the implementation of EC Regulation 510/2006.<sup>9</sup> In order to be protected these GI names have to be registered at the EU level. EC Regulation 510/2006 provides registration procedure and establishes conditions for the protection of PDOs and PGIs (see Part 5). Registered PDOs and PGIs are inserted in the **EU DOOR register**.

Member States have to enforce the protection.

### How are GI wines protected?

Wines are protected under **Council Regulation 1234/2007** establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation – see in particular articles 118a to 118t and articles 118y and 118z). Implementing rules have been defined in Commission regulation (EC) No 607/2009 of 14 July 2009<sup>10</sup>.

In order to be protected these GI names have to be registered at the EU level. Regulation 1234/2007 provides registration procedure and establishes conditions for the protection of PDOs and PGIs (see Part 5). Registered PDOs and PGIs are inserted in the **EU E-BACCHUS register**. Furthermore, GI wines from third countries have been registered through **bilateral agreements** and can be protected under the “normal procedure”.

Member States have to enforce the protection.

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<sup>8</sup> OJ C 206, 2 September 2003, p. 5.

<sup>9</sup> Commission Regulation 1898/2006 of 14 December 2006 laying down detailed rules on implementation of Council Regulation 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, OJ L 369, 23/12/2006, p. 12.

<sup>10</sup> See consolidated version of EC Regulation 607/2009  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2009R0607:20090801:EN:PDF>

## How are GI spirits protected?

GI spirits are protected under Annex III of **Regulation 110/2008** which provides a list of the type of spirits which can be registered. It also provides a list of European spirits drinks with a GI that are protected in the European Union (see annex III). Regulation 110/2008 describes the specific registration procedure for the protection of GIs for spirits at the European level which differs significantly from the registration procedure for wines and other agricultural products (see Part 4). Registered GIs are inserted in the EU **E-SPIRITS register**.

Further to **bilateral agreements** signed with the United States of America and with Mexico, the EC has also agreed to protect the following non EU spirits GIs: 'Tennessee Whisky' and 'Bourbon Whisky' (USA), 'Tequila' and 'Mezcal' (Mexico).

Member States have to enforce the protection.

## How are GI handicrafts protected?

Names of a limited number of handicrafts produced from agricultural products such as hay, essential oils, cork, cochineal, flowers and ornamental plants, wool, wicker, scutched flax and cotton are within the scope Regulation 510/2006 (listed in Annex II of the Regulation). In order to be protected these GI names have to be registered at the EU level. EC Regulation 510/2006 provides registration procedure and establishes conditions for the protection of these products.

Example: Italian Essential oil - Bergamotto di Reggio Calabria PDO

GIs for industrial products are protected in certain EU Member States under specific national legislation.

### Examples:

- Germany provides protection of GIs for cutlery, scissors, knives, razorblades, etc. under the "Solingen Decree" of 16 December 1994.<sup>11</sup>
- In Italy, the 'Vetro Artistico Murano' for Murano glass is protected by a Regional Law of 2001, which established the collective property right for glass producers with plants in the island.
- Specific legislation on protection of artisan goods and handicrafts also exists in France and Bulgaria.

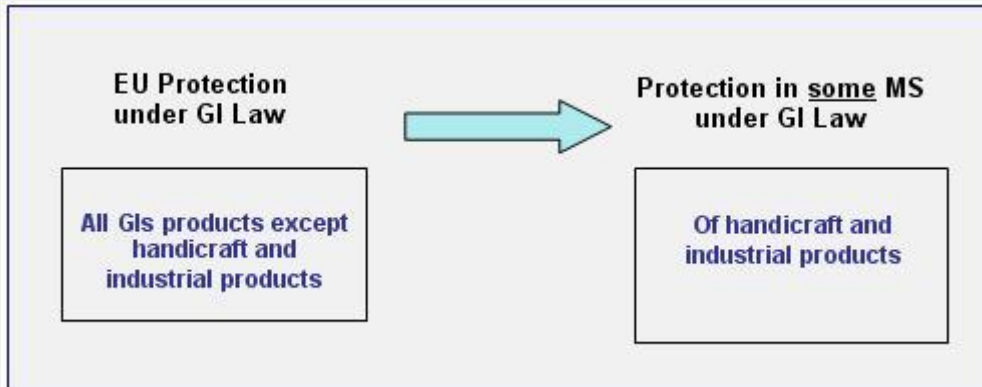
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<sup>11</sup> *Verordnung zum Schutz des Namens Solingen*, BGBl. 1994 I, p. 3833. This Decree replaced the Law for the protection of the name Solingen (German title: *Gesetz zum Schutze des Namens Solingen*) of 25 July 1938, RGBl. I, p. 953.

**Summary:**

Registration: GIs for wines, spirits and other agricultural products and foodstuffs are registered at the European level.

Protection: All registered GI products benefit from an EU wide protection. The responsibility for the enforcement of the GI protection lies with the Member States. For handicraft and industrial products that do not fall within the scope of Regulation 510/2006, protection as GIs is provided in the Member States where they are registered and not on all the EU territory, except when they are protected through a Community collective trademark.



## What are the EU definitions of geographical indications?

The European legal framework provides for different definitions with regard to geographical indications

### What are the definitions of geographical indications for agricultural products and foodstuffs?

Regulation 510/2006 provides for the two definitions: Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI) for agricultural products and foodstuffs.

A **Protected Designation of Origin (PDO)** means the name of a region, a specific place or, in exceptional cases, a country, used in relation to an agricultural product or a foodstuff:

- originating in that geographical area, and
- possessing quality or characteristics of the product essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and
- the production, processing and preparation of the product of which take place in the defined geographical area.

A **Protected Geographical Indication (PGI)** means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

- originating in that geographical area, and

- which possess 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.

### **What are the definitions of geographical indications for wines?**

Regulation 1234/2007<sup>12</sup> (Article 118b) also provides for the two definitions of **PDO and PGI** but takes into account the specificity of the wine sector. As a result, the PDO and PGI definitions are different from the ones included in Regulation 510/2006 for agricultural products and foodstuffs.

**‘Designation of origin’** means the name of a region, a specific place or, in exceptional cases, a country used to describe a product that complies with the following requirements:

- its quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
- the grapes from which it is produced come exclusively from this geographical area;
- its production takes place in this geographical area;
- it is obtained from vine varieties belonging to *Vitis vinifera*;

**‘Geographical indication’** means an indication referring to a region, a specific place or, in exceptional cases, a country, used to describe a product referred to in Article 33(1) which complies with the following requirements:

- it possesses a specific quality, reputation or other characteristics attributable to that geographical origin;
- at least 85 % of the grapes used for its production come exclusively from this geographical area;
- its production takes place in this geographical area;
- it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*.

### **What is the definition of a geographical indication for spirits?**

Contrary to the European Regulations on GIs for agricultural products and foodstuffs (Regulation 510/2006) and for wines (Regulation 1234/2007), Regulation 110/2008 does not differentiate between PDO and PGI.

Article 15 only provides for the one definition of a **Geographical Indication**: ‘A geographical indication shall be an indication which identifies a spirit drink as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to its geographical origin’.

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<sup>12</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:148:0001:0061:en:PDF>

## What are the main differences between the definitions of PDOs and PGIs?

The geographic link is stronger for PDOs than for PGIs (or GIs for spirits):

- For PDOs, the raw materials must come from the defined geographical area. There is no such rule for PGIs (or GIs for spirits), except for wines as even for a PGI wine at least 85 % of the grapes used for its production come exclusively from this geographical area and the other 15% from the same EU Member State (100 % of the grapes is required for PDOs);
- Contrary to PDOs, for PGIs (or GIs for spirits) the link between the specific quality, reputation or other characteristics and the geographical origin is necessary but is not essential or exclusive. It must be merely 'attributable to that geographical origin';
- As far as the agricultural product or foodstuff GIs are concerned, for a PGI only one of the three stages - production, processing or preparation - must take place in the defined geographical area, whereas for a PDO all stages must take place in the defined geographical area. This rule does not apply to the wine sector as the production must take place in the geographical area for both PDOs and PGIs

## Can the raw material for PGI come from another country?

**No, in the wine sector** this is not possible.

**Yes, in the case of agricultural product or foodstuff PGIs and GIs for spirits**, the raw materials may come from outside the defined geographical area, including a territory of another country. The EC Regulation on agricultural product or foodstuff GIs provides that any restriction on the origin of raw materials for a GI must be justified in relation to the link between a specific quality, the reputation or other characteristic of the agricultural product or foodstuff and the geographical origin<sup>13</sup>.

### **Case study: Scotch Beef PGI vs. Shetland Lamb PDO**

Scotch beef is registered as a PGI in the EU while Shetland Lamb is registered as a PDO. The main difference between the two products' specifications relates to the area of production. For the Shetland Lamb PDO, the area is confined to the Shetlands islands. For the Scotch beef PGI, the area is not as precisely defined: it includes most of Scotland, the mainland but also the islands off the west coast, Orkney and Shetlands. In both cases, the animal must be reared for the entirety of their lives, slaughtered and dressed in the designated geographical area.

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<sup>13</sup> - Article 5§2 of Commission Regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs

## Trademarks and GIs in the EU

### What are the main differences between a GI and a trademark?

GIs	Trademarks
<b>MUST</b> certify the origin of the product	<b>MAY</b> certify origin of the product Trademarks should not mislead the public on the origin of the product, nor can they be descriptive. Many countries have implemented provisions at the national level making it impossible to register geographical terms as trademarks.
<b>Production rooted in the region</b> - it cannot be delocalised to another area / country	<b>Production not attached to a specific place</b> - products can be made anywhere
<b>Collective control</b> of the producers plus external public or private bodies to ensure that the products comply with the specifications	<b>Individual control</b>

### What is the comparative scope of the protection?

GIs	Trademarks
<p>The EU <i>sui generis</i> GI system provides for a comprehensive protection against:</p> <ul style="list-style-type: none"> <li>• Direct or indirect commercial use of a registered name for products not covered by the registration</li> <li>• Misuse, imitation or evocation of the name on a non registered product. This extends to expressions such as 'style', 'type', 'method' etc. suggesting that the product is equivalent or associated with the original, even if the true origin of the product is indicated or if the protected name is translated.</li> <li>• False or misleading information about the origin, nature or qualities of products on packaging that might give a false impression as to their origin.</li> <li>• 'Genericity'. Once registered, the GI name cannot become generic</li> </ul>	<p>The registered trademark provides for the exclusive rights on the use of the name and/or logo in the classes where it has been registered.</p> <p>In general, there is no guarantee against the use of the trademark in translation and with expressions like 'style', 'type', etc</p> <p>There is no guarantee against 'genericity'.</p> <p>If the trademark owner does not assert his rights, the name can become generic</p>



<p>Protection of GIs is usually not conditioned on the use on the market.</p>	<p>For the protection to be effective, the trademark must be used on the market.</p> <p>This can sometimes pose problems, for instance when sanitary standards prevents a product from being sold in certain markets. Failure to use the trademark can lead to cancellation.</p>
<p>Enforcement of the rights on the GI name: often public authorities play a role in the defence of the GI.</p> <p>In countries with <i>sui generis</i> systems of protection – such as in the EU - GIs are protected through administrative enforcement, i.e. the state or public authorities are responsible for policing and ensuring GI protection.</p>	<p>Enforcement of trademark rights is entirely private – it is up to a trademark owner to defend its rights.</p> <p>Trademark owners must continue to assert their rights. They need to carry out a regular monitoring of the markets where the trademark is protected. They need to be ready to launch all necessary legal actions (opposition to trademark registration for instance) to protect their intellectual property right. Failure to do so would significantly undermine the right. Such protection is called <i>ex parte</i>.</p>
<p>The principle “first in time, first in right” is not automatically applied for GIs in the EU. A GI can be registered and co-exists with an existing trademark if all the GI requirements are met. On the contrary, a trademark cannot be registered if a GI name is already protected.</p> <p>Articles 3.4 of Regulation 510/2006, 23.3 of Regulation 110/2008 (spirits) and 118k of Regulation 1234/2007 provide that a designation of origin or geographical indication cannot be registered where, in the light of a trademark'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.</p>	<p>Protection granted according to the principle “first in time, first in right”.</p>

### What is the comparative duration of the protection?

GIs	Trademarks
Often protection granted as long as the GI exists Ex: in the EU, GI protection is not limited in time – no need to renew the protection	Protection must be renewed periodically Ex: in the EU, trademarks must be renewed every 10 years

### What is the comparative cost of the protection?

GIs	Trademarks
Often limited registration's costs. Ex: at the EU level, GI registration is free of costs.	Relatively high cost of registration Registration costs: +/- 1,500 to 2,000 US\$ per class and per trademark The registration must be renewed periodically.
Often less expensive costs of right's enforcement.  In countries where there is a <i>sui generis</i> GI protection system, like in the EU, GIs are protected through administrative enforcement, i.e. the state or public authorities are also responsible for policing and ensuring GI protection. This public support reduces the costs of protection for GI producers.	High costs of rights' enforcement in many countries.

### What are the differences between GIs and collective trademarks

Collective trademarks designate the source of products or services not in geographical terms, but in relation to an association of producers and its members. In this case, **the main function of collective trademarks is to put emphasis on the producers of the goods and not on the place where the goods have been produced**, since this place does not have any specific bearing on the quality and reputation of the goods. **The same differences as the ones mentioned above for trademarks apply between GIs and collective trademarks.** Examples of countries where GIs can be protected via collective marks: Australia, Japan, Norway, Philippines, United States<sup>14</sup>.

<sup>14</sup> - See Handbook on GIs published by the European Commission on 27<sup>th</sup> June 2007 available at: [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/pr270607\\_en.html](http://ec.europa.eu/trade/issues/sectoral/intell_property/pr270607_en.html)

## What are the differences between GIs and certification trademarks

In certain countries GIs are protected as certification trademarks. **Certification trademarks** are the most similar in terms of function to GIs. They **are used to show the compliance with certain defined standards**; among these standards there can be the origin of production. Besides the general differences between GIs and trademarks (see above) that apply, the following elements can be identified:

Example of countries where GIs can be protected via certification marks: Australia, United States

<b>GIs</b>	<b>Certification marks</b>
Scope of protection: Absolute protection of the name for all legitimate producers in the area	Scope of protection: Protection of a name in combination with a logo for any producer that meets the standards

## GI Logos in the EU

### What are the EU GI logos?

The EU has established **mandatory logos** for GIs only in the context of its Regulation on the protection of geographical indications and designations of origin **for agricultural products and foodstuffs**. These logos are **optional for GI wines** (they may appear on labels of wines in accordance with article 118z, paragraph 1, point e) of Regulation 1234/2007. When they appear on the label, they must be accompanied by the corresponding protected designation of origin or geographical indication). **There are no EU GI logos for spirits GI products.**

The rules regarding the PDO and PGI logos were defined in Commission Regulation (EC) n°2037/93<sup>15</sup> which has been replaced by Commission Regulation (EC) 1898/2006<sup>16</sup> (article 14 and annex V). This Regulation was modified by Commission Regulation (EC) N°628/2008<sup>17</sup> which introduced a different colour code in order to make easier for consumers to distinguish between the two concepts, Protected Designation of Origin (PDO) and Protected Geographical Indication (PGI). See below.

### Are there different GI logos for the different types of GIs?

Yes, there are **two different EU GI logos**: one for the Protected Designation of Origin – PDO and one for the Protected Geographical Indication – PGI (see below)



Protected Designation of Origin (PDO)



Protected Geographical Indication (PGI)

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<sup>15</sup> - OJ L 185, 28.7.1993, p. 5.

<sup>16</sup> - [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_369/l\\_36920061223en00010019.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_369/l_36920061223en00010019.pdf)

<sup>17</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:173:0003:0005:en:PDF>

## **Is the use of the European logos compulsory on GI products?**

Since 1<sup>st</sup> of May 2009, the indications 'protected designation of origin' and 'protected geographical indication' or the Community symbols associated with them (logos) must appear on the labelling of agricultural products and foodstuffs protected by a PDO and PGI which fall within the scope of EC Regulation 510/2006 and originating in the Community. **This is optional for European GI wines and for all GI products coming from third countries.**

The logo can be used both in the European Union and in all markets around the world.

These logos may appear on labels of wines in accordance with article 118z, paragraph 1, point e) of Regulation 1234/2007. When they appear on the label, they must be accompanied by the corresponding protected designation of origin or geographical indication.

**There are no EU GI logos for spirits GI products.**

## **Are there any specific rules on the use of the logos?**

Yes, producers that want to use a GI logo must respect the rules set out in Commission Regulation (EC) 1898/2006<sup>18</sup> (article 14 and annex V), as modified by Commission Regulation (EC) N°628/2008<sup>19</sup>. The logos can only be used on the product covered by the registration, which meets the specification's requirements. The logo cannot be used on a product that only includes a PDO or PGI as an ingredient, or is a mixture of different PDOs or PGIs.

Where the Community symbols or the indications appear on the label of a product, they shall be accompanied by the registered name.

The European Commission published on 16 December 2010 voluntary guidelines on the labelling of foodstuffs using Protected Designations of Origin (PDOs) or Protected Geographical Indications (PGIs) as ingredients<sup>20</sup>. Under certain conditions, the Commission feels that the European Union terms, abbreviations or symbols (i.e. logos) accompanying the registered name should be used in labelling, within or close to the trade name or in the list of ingredients of the foodstuff only if it is made clear that the said foodstuff is not itself a PDO or PGI. Otherwise, the Commission takes the view that this would result in the undue exploitation of the reputation of the PDO or PGI and result in

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<sup>18</sup> - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2006R1898:20080710:EN:PDF>

<sup>19</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:173:0003:0005:en:PDF>

<sup>20</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:341:0003:0004:en:PDF>

consumers being misled. For example, the trade names 'Pizza au Roquefort' (Pizza with Roquefort) or 'Pizza élaborée avec du Roquefort AOP' (Pizza prepared with Roquefort PDO) would hardly give rise to a dispute in the eyes of the Commission. By contrast, the trade name 'Pizza au Roquefort AOP' (Pizza with Roquefort PDO) would clearly be ill-advised, in as much as it could give the consumer the impression that the pizza as such was a product benefiting from a PDO.

### **Are there any requirements with regard the size and the colour of the logo?**

Yes, the European Commission has set up the following rules which must be respected (See annex V of Commission Regulation (EC) 1898/2006) as modified by Commission Regulation (EC) N°628/2008:

**Colours:** the logos should appear in colour, using either direct colours (Pantone) or a four-colour process.

If the printing colours on the packaging or labelling of some products are totally different from the reference colours of the logos, there are two suitable approaches: Logo in positive (if the background colour of the packaging or label is light, use the logo in positive format, using the darkest print colour on the packaging or label) or Logo in negative (if the background colour of the packaging or label is dark, use the logo in negative format, using the background colour of the packaging or label).

If the logo is used in colour on coloured backgrounds which make it difficult to read, use a delimiting outer circle around the logo to improve its contrast with the background colours.

**Typography:** Times Roman capitals must be used for the text.

**Sizes:** the minimum size is 15 mm in diameter.

### **Who decides?**

The decision on the use of the logos belongs to each group of GI producers provided that they respect the general rules set out in the Commission Regulation (EC) 1898/2006<sup>21</sup> (article 14 and annex V) as modified by Commission Regulation (EC) N°628/2008<sup>22</sup>.

### **Are there any requirements with regard to the positioning of the logo on packaging?**

No, the producers can decide freely where they want to put the logo on their packaging.

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<sup>21</sup> - [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_369/l\\_36920061223en00010019.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_369/l_36920061223en00010019.pdf)

<sup>22</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:173:0003:0005:en:PDF>

## Registration in the EU

### What is the procedure to register a name as a GI in the EU?

There are **two different procedures for the registration of a GI in the EU: one applicable to wines, agricultural products and foodstuffs and another one applicable to spirits.**

The main actors involved in the procedure are applicants (group of producers) and national and European authorities responsible for registration. The group of producers interested in applying for the registration of a European GI name in the EU must follow a procedure that includes two phases, one at the national level and the other at the European level. The whole process can take several years.

### What is the procedure to register a name as a GI for an EU wine, agricultural product or foodstuff in the EU?

**Regulation 510/2006 (agricultural products and foodstuffs) and Regulation 1234/2007 (wines)** provide for a two steps procedure to be followed: the national phase and the European phase

#### What is the procedure at the national level?

Once a group of producers has defined its product according to precise specifications (see p.29), it must send the application for registration of a product name as a GI to its competent national authorities.

The national authorities examine the application in order to check that it is justified and meets the conditions in Regulation 510/2006 when regarding an agricultural product or a foodstuff or to Regulation 1234/2007 if it is related to a wine. They initiate a national objection procedure, allowing for a reasonable period within which any person having a legitimate interest and established or resident on its territory may lodge their objection to the application. If the requirements of Regulation 510/2006 or Regulation 1234/2007 are met and no objection is raised, the Member State takes a favourable decision. In case of objections, the Member State considers the admissibility of the objections and decides whether to reject the application or accept it. If a positive decision is taken by the national authority, it must be made public. The Member State may grant protection, on a transitional basis only. The application file, a declaration of the Member State and the publication reference of the specification must be sent to the Commission.

From the moment of receiving an application for registration and until forwarding the files to the EC Commission the procedure at the national level may require more than a year, depending on the opposition raised and readiness of the specifications and control bodies.

### **What is the procedure at the EU level?**

After receiving the documents from the Member State, the Commission examines the application. If the Commission considers that the conditions laid down in Regulation 510/2006 or Regulation 1234/2007 are met, it publishes in the Official Journal of the European Union, the single document of the application and the reference to the publication of the specification (the Member States must provide for an electronic access to the publication of the specification). Where that is not the case, the Commission rejects the registration application.

The publication opens an opposition period during which any Member State or third country may object to the registration, by sending a duly substantiated statement to the Commission. In the case of wine, the opposition period lasts 2 months while for an agricultural product or a foodstuff it lasts 6 months and no consultation between the interested parties is foreseen. Where an objection is admissible for an agricultural product or a foodstuff, the Commission will invite the interested parties to undertake appropriate consultations. If no agreement is reached, the Commission will take a decision and publish it in the Official Journal of the European Union (OJEU). If no objection is made, the name is registered and entered into the European Register of Protected Geographical Indications and Designations of Origin DOOR database (for agricultural products and foodstuffs)<sup>23</sup> or E-Bacchus database (for wines)<sup>24</sup>. The registration is published in the OJEU.

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<sup>23</sup> <http://ec.europa.eu/agriculture/quality/door/list.html>

<sup>24</sup> <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?&language=EN>



## **NATIONAL PHASE IN THE EUROPEAN UNION FOR EUROPEAN PRODUCTS**

**Definition** by the group of producers of **its product according to precise specifications**



**Request from the producer's group** sent to its competent national authorities



**Examination of the application by the national authority** to check if it is justified and meets the conditions of regulation 510/2006 (for an agricultural product or a foodstuff) or Regulation 1234/2007 (for a wine)



**Objection procedure**



If no objection is raised and the requirements of the regulation are met, the **Member State** takes a **favourable decision**

If objection is raised, the **Member State** considers the admissibility of the objections and decides whether to reject or accept the application

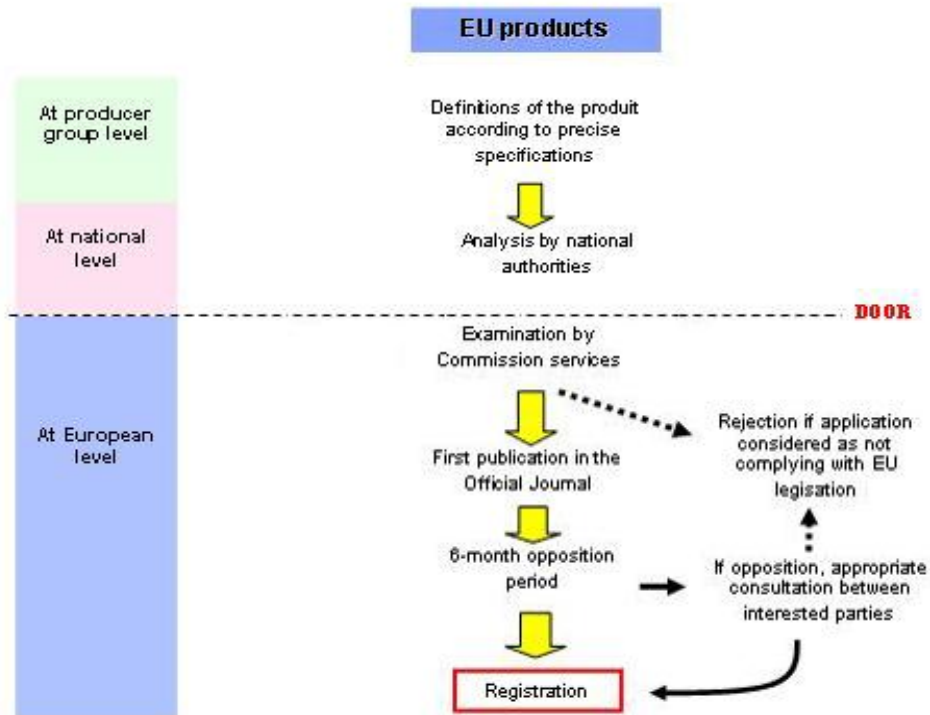


**The decision is made public**

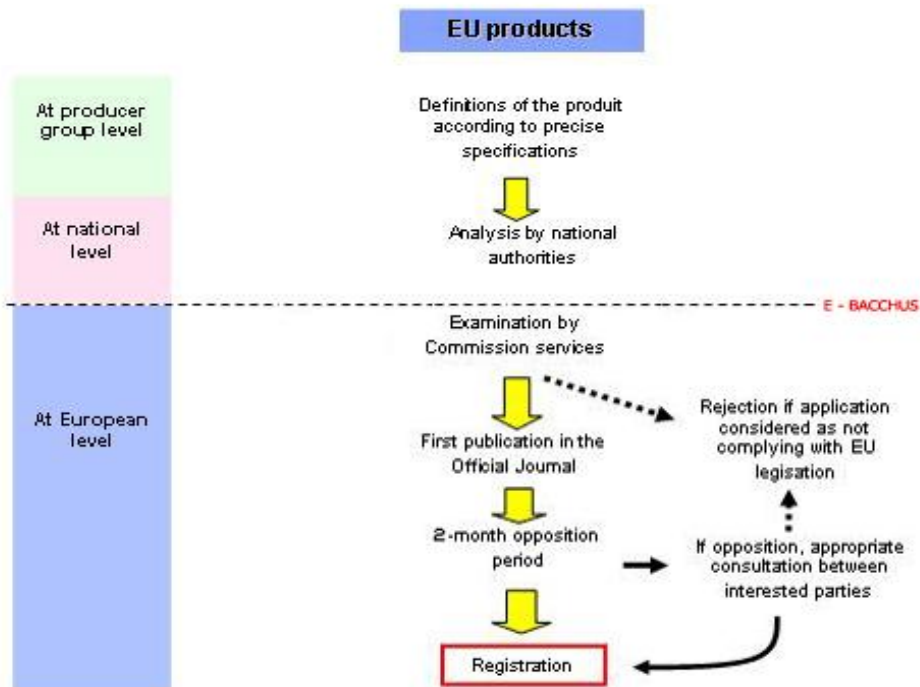


**Request from the producer's group** sent to the European Commission

## EUROPEAN UNION PHASE FOR EUROPEAN PRODUCTS<sup>25</sup> For agricultural products and foodstuffs



### For wines



<sup>25</sup> Source: [http://ec.europa.eu/agriculture/quality/schemes/index\\_en.html](http://ec.europa.eu/agriculture/quality/schemes/index_en.html)

## What is the procedure for the registration of a name as a GI for an EU spirits in the EU?

**Regulation 110/2008** introduced a different procedure from the one applicable for the registration of wines, agricultural products and foodstuffs. Although it is up to the Member State to send the request for registration, there is no detailed provision with regard to a national phase, but only for the registration procedure at the EU level.

Article 17 provides that the application for registration must be sent by the Member State of origin of the spirit drink to the European Commission. A technical file has to be attached to the application (for information on its content, see below the question regarding the 'product specification'). The European Commission verifies if that application complies with the Regulation within 12 months of the date of submission of the application. If it concludes that the application does comply with the Regulation, the main specifications of the technical file are published in the Official Journal of the European Union.

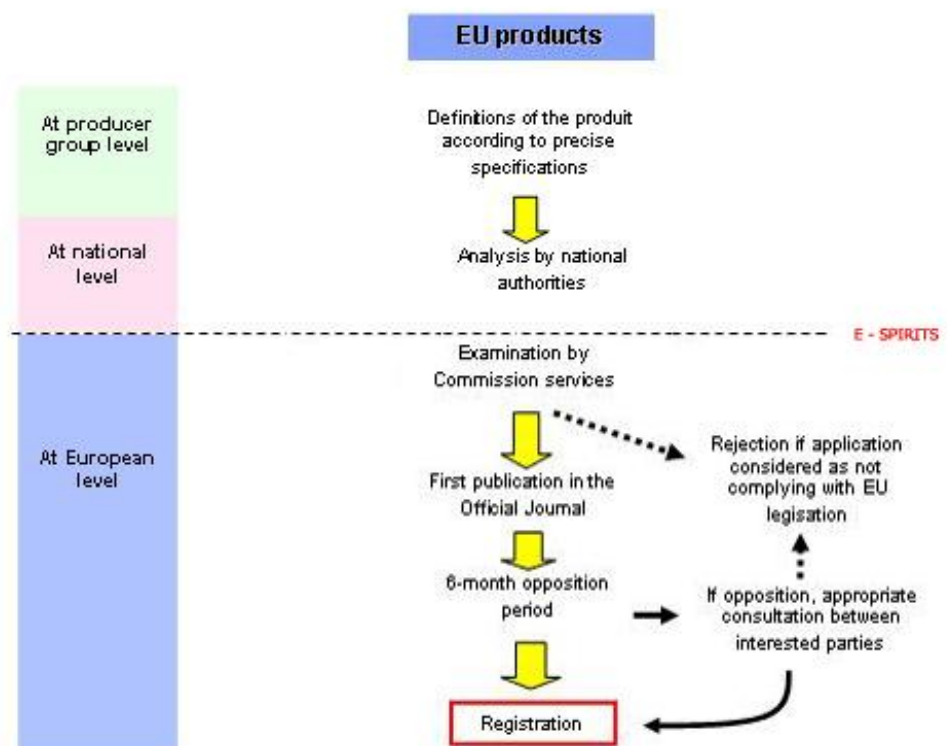
This publication opens the opposition procedure at the EU level. Within six months of the date of publication, any natural or legal person that has a legitimate interest may object to the registration of the GI on the grounds that the conditions provided for in the Regulation are not fulfilled.

If there is no opposition, the Commission takes the decision to register the GI in Annex III of the Regulation. Its decision is published in the Official Journal of the European Union. Regulation 110/2008 provides a list of European spirits drinks with a GI that are protected in the European Union (see annex III). They are included in the E-SPIRIT database<sup>26</sup>

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<sup>26</sup> <http://ec.europa.eu/agriculture/spirits/>

## EUROPEAN UNION PHASE FOR EUROPEAN PRODUCTS<sup>27</sup>



### Can third countries register their GIs in the EU?

**Yes**, GIs that are protected in their country of origin can secure registration in the EU. The procedure differs slightly according to the products (see below).

### What is the procedure for third countries to register GI's for their agricultural products and foodstuffs?

The EU Regulations on GIs (Regulation 510/2006 for agricultural products and foodstuffs, Regulation 1234/2007 for wines and Regulation 110/2008 for spirits) provide for the registration of non EU GIs. **The procedures applicable are the same as the ones for EU GI products** (see questions above for more information and the diagrams below).

The only difference with regard to EU GI products is that **the applications may be sent directly from the applicant to the Commission of the European Communities** located in Brussels (European Commission, DG AGRI, Rue de la Loi, 130, B-1049, Belgium) **or via the appropriate competent authority of the third country concerned.**

<sup>27</sup> Source: [http://ec.europa.eu/agriculture/quality/schemes/index\\_en.html](http://ec.europa.eu/agriculture/quality/schemes/index_en.html)

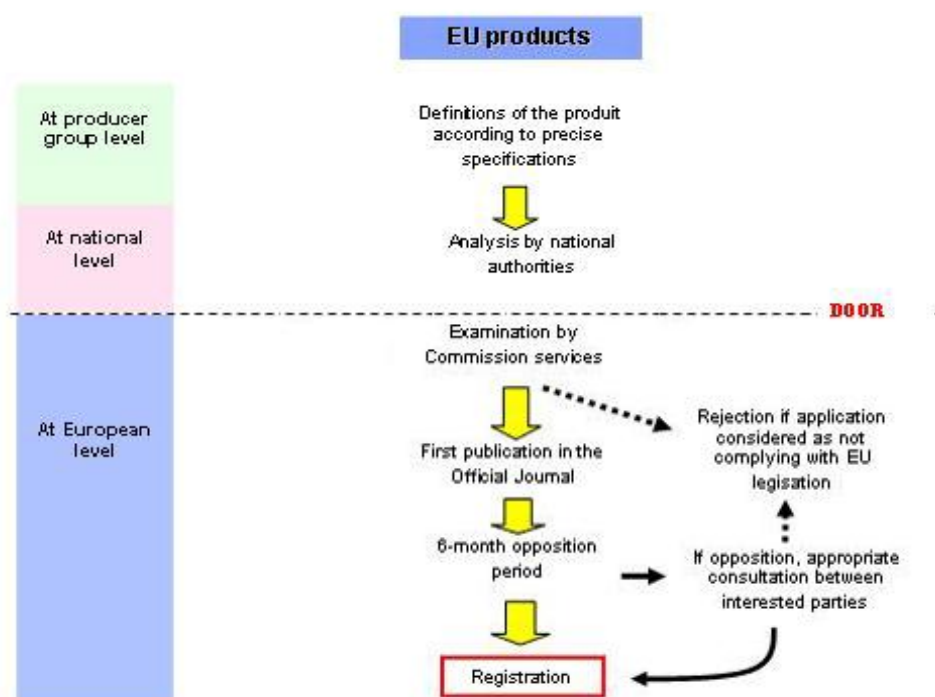
Applications from third countries must contain the four elements requested for EU applications:

- 1) The name and address of the applicant group;
- 2) The 'specification', which consists of the documents listed in Article 4(2) of Regulation 510/2006; and
- 3) A single document setting out the main points of specification as indicated in Article 5(3)(c);
- 4) Proof that the name in question is protected in the country of origin.

All documents sent to the Commission have to be in one of the official languages of the institutions of the European Union<sup>28</sup> or accompanied by a certified translation into one of those languages.

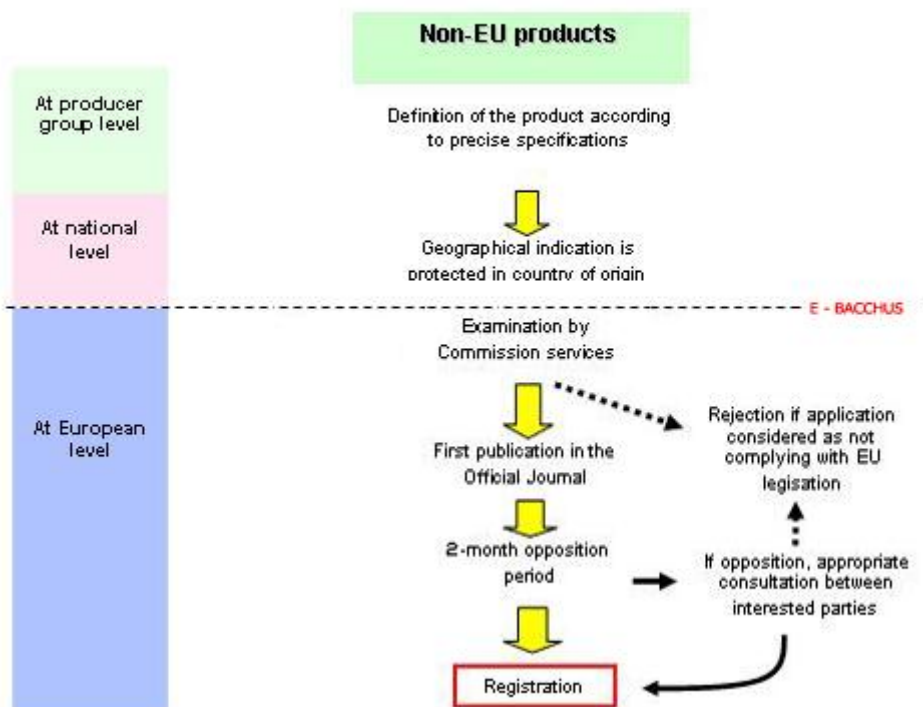
It should be noted that some third country GIs for wines and spirits are protected in the EU as a result of bilateral agreements or ad hoc decisions. That is the case of Napa Valley (USA) and Vale dos viñedos (Brazil) for wines and 'Tennessee Whisky' (USA), 'Bourbon Whisky' (USA), 'Tequila' and 'Mezcal' (Mexico) for spirits.

### Registration procedure for non EU agricultural products and foodstuffs

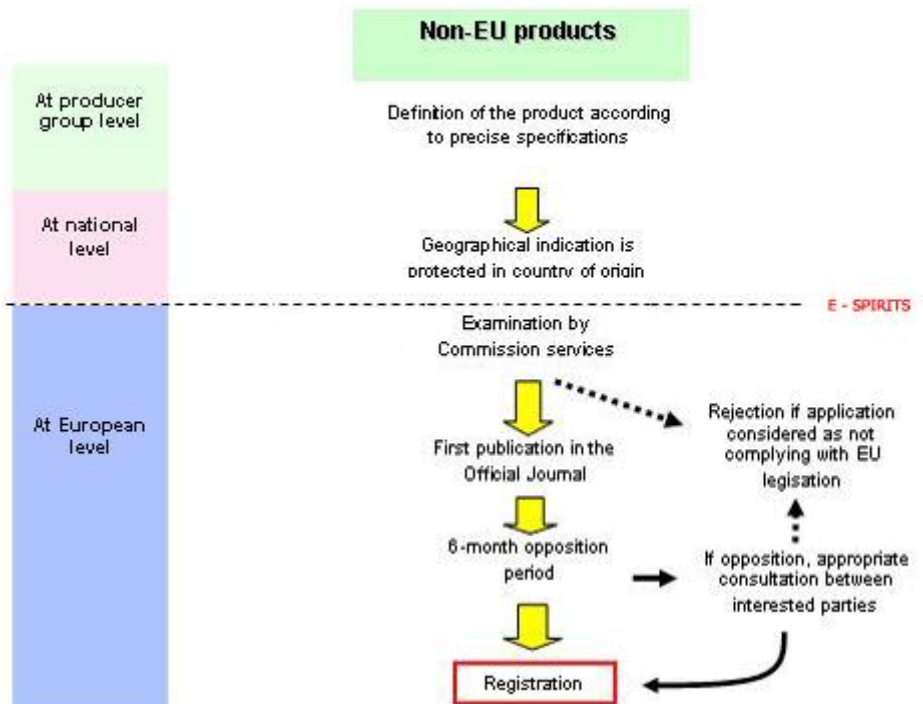


<sup>28</sup> The European Union has 22 official languages: Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish. It has also been decided to give Irish the status of an official language of the EU, with effect from 1 January 2007.

### Registration procedure for non EU wines



### Registration procedure for non EU spirits



## **What is the level of protection granted to third countries GI's registered in the EU?**

The EU offers the same level of protection to EU and non EU registered GIs.

## **What are the elements required in the GI “product specification” in the EU?**

In order to be eligible for registration, an agricultural product, a foodstuff, a wine or a spirits must comply with a so-called 'product specification'.

The product specification is a document, which contains information about the product, its specific qualities, its area of production, and explains the link between the geographical environment (*'terroir'*) and the product in question. The specification must clearly state whether the name is to be registered as a protected geographical indication or as a protected designation of origin.

There are 3 different product specifications depending on the product concerned: one for agricultural products and foodstuffs, one for wines and one for spirits.

### **The GI product specification for agricultural products and foodstuffs**

Article 4.2 of Regulation 510/2006 provides that the specification with must contain at least:

- a) the name of the agricultural product or foodstuff to be registered;
- b) a description of the agricultural product or foodstuff, including the raw materials, if appropriate, and principal physical, chemical, microbiological and organoleptic characteristics of the product or the foodstuff;
- c) the definition of the geographical area and, where appropriate, details indicating that raw materials coming from a geographical area larger than or different from the processing area;
- d) evidence that the agricultural product or the foodstuff originates in the defined geographical area;
- e) a detailed description of the growing or production of the agricultural product or foodstuff and, if appropriate, the authentic and unvarying local methods as well as information concerning packaging;
- f) details explaining the link between the quality or characteristics of the agricultural product or foodstuff and the geographical environment (for PDOs) or between a specific quality, the reputation or other characteristics of the agricultural product or foodstuff and the geographical origin (for PGIs);
- g) the name and address of the authorities or bodies verifying compliance with the provisions of the specification and their specific tasks;
- h) any specific labelling rule for the agricultural product or foodstuff in question;

- i) any requirement laid down by Community or national provisions.

**Sub-question: Is it mandatory to include the name of the species or the name of the breed used?**

No, it is optional. Article 4(2)(b) of Regulation 510/2006 provides that a description of the agricultural product or foodstuff should contain “principal physical, chemical, microbiological and organoleptic characteristics of the product or the foodstuff”. The biological characteristics are not mentioned as such.

Animal breeds are mentioned in PGIs and PDOs specifications for meat.

**Case study: the UK PGI “Welsh Lamb” has the following description:**

‘Welsh lamb is defined as meat taken from sheep which are born and reared in Wales... Welsh lamb is derived from the sheep breeds of Wales, predominately the Welsh Mountain, Welsh Mules, Welsh Halfbreeds, Beulah, Welsh Hill Speckled Face, Lleyn Sheep, Llanwennog, and Radnor. These breeds may be crossed with Texel, or Suffolk rams, or any other terminal sire breed for prime lamb production’.

Most of the specifications for fresh fruit and vegetables contain in the descriptions of goods references to plant varieties.

**Case study: the Italian PGI ‘Castagna Cuneo’ may be used:**

‘to denote only the following varieties of chestnut of the species ‘Castanea sativa’, excluding interspecific hybrids: Ciapastra, Tempuriva, Bracalla, Contessa, Pugnante, Sarvai d'Oca, Sarvai di Gurg, Sarvaschina, Siria, Rubiera, Marrubia, Gentile, Verdesa, Castagna della Madonna, Frattona, Gabiana, Rossastra, Crou, Garrone Rosso, Garrone Nero, Marrone di Chiusa Pesio and Spina Lunga<sup>29</sup>.

**The GI product specification for wines**

Article 118c of Regulation 1234/2007 provides that the specification in the wine sector must contain at least:

1. A technical file containing:

- (a) the name to be protected;
- (b) the name and address of the applicant;
- (c) a product specification as referred to in paragraph 2;
- (d) a single document summarising the product specification referred to in paragraph 2.

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<sup>29</sup> OJ C 321, 29 December 2006, p. 9.



2. The product specification shall consist at least of:

- (a) the name to be protected;
- (b) a description of the wine(s):
  - (i) for wines with a designation of origin, its principal analytical and organoleptic characteristics;
  - (ii) for wines with a geographical indication, its principal analytical characteristics as well as an evaluation or indication of its organoleptic characteristics;
- (c) where applicable, the specific oenological practices used to make the wine(s) as well as the relevant restrictions on making the wine(s);
- (d) the demarcation of the geographical area concerned;
- (e) the maximum yields per hectare;
- (f) an indication of the wine grape variety or varieties the wine(s) is obtained from;
- (g) the details bearing out the link referred to in Article 34(1) (a)(i) or, as the case may be, in Article 34(1)(b)(i);
- (h) applicable requirements laid down in Community or national provisions or, where foreseen by Member States, by an organisation which manages the protected designation of origin or geographical indication, having regard to the fact that such requirements shall be objective and non-discriminatory and compatible with Community law;
- (i) the name and address of the authorities or bodies verifying compliance with the provisions

### **The GI product specification for spirits**

Article 17 of Regulation 110/2008 provides that the specification with must contain at least:

- (j) the name and category of the spirit drink including the geographical indication;
- (k) 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;
- (l) the definition of the geographical area concerned;
- (m) a description of the method for obtaining the spirit drink and, if appropriate, the authentic and unvarying local methods;
- (n) the details bearing out the link with the geographical environment or the geographical origin;
- (o) any requirements laid down by Community and/or national and/or regional provisions;
- (p) the name and contact address of the applicant;
- (q) any supplement to the geographical indication and/or any specific labelling rule, according to the relevant technical file.

## Are all the GI product specifications available to the public?

In accordance with Regulations 510/2006, 1234/2007 and 110/2008, **the specifications of registered GIs must be accessible to the public.**

Under Regulations 510/2006 and 1234/2007, the EU national authorities must ensure that the final version of the specification is published and assure electronic access to the specifications.

Under the three Regulations, when the Commission considers that the conditions are met for the registration of a geographical indication, it publishes the main elements of the request and the reference to the publication of the specification.

The European Commission also created databases with contain all the registered GI products, as well as the pending requests for registration and pending request for the modification of the specifications.

- **DOOR database for agricultural products and foodstuffs<sup>30</sup>**
- **E-BACCHUS database for wines<sup>31</sup>**
- **E-SPIRIT database for spirits<sup>32</sup>**

## How is the GI area delimited?

There is **no standard EU approach** towards the delimitation of the GI area; each of the 27 Member States has its own method and procedures to define the area. However, as a general rule, the geographical area is defined in a detailed, precise way based on evidence relating to historical, geological, agronomical, climatic...conditions.

### **Case study: France**

In France, a group of qualified professionals and experts work with the producers to define precisely the GI area. Sometimes, specialists such as historians, geologists, pedologists, etc. are called in to help define the area.

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<sup>30</sup> <http://ec.europa.eu/agriculture/quality/door/list.html>

<sup>31</sup> <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?&language=EN>

<sup>32</sup> <http://ec.europa.eu/agriculture/spirits/>

## **Are there any problems between the definition of the GI geographical area and the administrative segmentation?**

Geographical limits are defined by natural or human factors, but not necessarily by administrative boundaries, although it can be a criterion. In practice, there are no problems between GI areas and the EU administrative segmentation. For example, the geographical area of the Spanish wine PDO 'Rioja' covers three Spanish administrative regions: Basque Country; La Rioja and Navarre.

When the GI area covers regions from two Member States, the EU GI system provides for the registration of **cross-border GIs** (see below).

**A whole country can be used as the GI area in exceptional circumstances** when it presents homogenous characteristics. Example: Miel luxembourgeois de marque nationale.

## **How are cross-border GIs registered?**

A cross-border GI is a GI which comes from an area that **covers regions from two countries**. There are specific provisions with regard to the protection of cross-border GIs for agricultural products and foodstuffs and for wines, but not for spirits.

In such a case, several groups may lodge a joint application. As a general rule, the normal registration procedure is implemented (see Part 4). The only differences are the following:

- if only Member States are concerned, the national objection procedure must be carried out in all Member States concerned. The application must be submitted by any of those Member States in the name of the others;
- if at least one Member State and at least one third country are concerned, the national objection procedure must be carried out in all Member States concerned and the conditions for the registration of a foreign GI (required documents and information) must be fulfilled in all third countries concerned. The application must be submitted to the Commission by any Member State concerned or any of the applicant groups in third countries concerned, directly or via the authorities of the third country concerned, including the declarations from all the Member States concerned and the proof of protection in each of the third countries concerned.

Up to now, there are only a few cross-border GIs in the EU in the spirits sector, such as 'Irish Whiskey' from Ireland and Northern Ireland (United Kingdom) and 'Ouzo' from Greece and Cyprus.

## Can generic names be protected?

**No, names that have become generic may not be registered.** Once registered at the EU level, protected names cannot become generic.

The EC Regulations on GIs, Regulation 510/2006 relating to agricultural products and foodstuffs, Regulation 1234/2007 for wines and Regulation 110/2008 for spirits provide that a “name has become generic” when ‘the name of an agricultural product or a foodstuff/wine/spirits which, although it relates to the place or the region where this product or foodstuff/wine/spirits was originally produced or marketed, has become the common name of an agricultural product or a foodstuff/wine/spirits in the Community’. These Regulations do not clarify what is a ‘common name’. Regulation 510/2006 and Regulation 1234/2007 provide that in order to establish whether or not a name has become generic, account has to be taken of all factors, in particular:

- the existing situation in the EC Member State and in areas of consumption;
- the relevant national or Community laws.

### How does the EC determine whether a name has become generic?

#### Case study: Feta

The name ‘Feta’ was registered as a PDO in 1996 in the EC Community register for cheese produced from ewe’s and goat’s milk in Greece. Denmark, Germany and France contested that decision. The Commission invited the Member States to provide information on the production, consumption and available knowledge on the denomination of ‘Feta’. The information it obtained was then submitted to a Scientific Committee for examination. It adopted a unanimous opinion that the term ‘Feta’ is not generic. The Scientific Committee found that production and consumption of ‘Feta’ is heavily concentrated in Greece and in the mind of consumers the name ‘Feta’ is also associated with a Greek origin implying that the name has not become generic on the EU territory. In 2002, the Commission agreed to register Feta as a Protected Designation of Origin (PDO).

## What are the rules regarding homonymous names?

Homonyms are words which are spelled and/or pronounced alike but are different in meaning.<sup>33</sup> In practice, it is possible that different geographical regions have the same name and are the place of origin for the same kind of products.

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<sup>33</sup> The Concise Oxford Dictionary, 6<sup>th</sup> ed., Oxford University Press, 2001. Homonyms should not be confused with *homophones* - words, such as *night* and *knight*, that are pronounced the same but differ in meaning, origin and spelling.

For example, the Belgian meat-based product 'Jambon d'Ardenne' and the French meat-based product 'Jambon sec et noix de jambon sec des Ardennes' are both registered PGIs in the EU.

Regulation 510/2006 relating to GI agricultural products and foodstuffs, Regulation 1234/2007 for GI wines and Regulation 110/2008 for GI spirits provide specific rules regarding the possible registration and use of homonymous GIs.

**Registration of homonymous names is allowed provided it takes into account local and traditional usage and does not mislead consumers.** A homonymous name which misleads the consumer into believing that products come from another territory cannot be registered.

Once registered, the use of a homonymous name must be subject to a sufficient distinction in practice between the homonym registered subsequently and the name already on the register bearing in mind the need to treat the producers concerned in an equitable manner and not to mislead the consumer.

There are additional rules applicable to agricultural products and foodstuffs and to wines.

Article 13.4 of Council Regulation 510/2006 states that the European Commission allows for the coexistence of a registered name and an unregistered name that are identical. Coexistence can be granted for a maximum period of 15 years after which the unregistered name shall cease to be used provided that three conditions are met:

- the identical unregistered name has been in legal use consistently and equitably for at least 25 years before 24 July 1993
- it is shown that the purpose of its use has not at any time been to profit from the reputation of the registered name and that the consumer has not been nor could be misled as to the true origin of the product;
- the problem resulting from the identical names was raised before registration of the name.

Use of the unregistered geographical name concerned is authorised only where the country of origin is clearly and visibly indicated on the label.

Article 118j of Regulation 1234/2007 relating to GI wines provides in its §2 that Member States must also respect similar rules on homonymy at the national level. According to its §3, where the name of a wine grape variety contains or consists of a protected designation of origin or a protected geographical indication, that name shall not be used for the purposes of labelling the wine products. Finally, this regulation makes it clear that these rules apply without prejudice to protected geographical indications applying in relation to spirit drinks within the meaning of Regulation (EC) No 110/2008 and vice versa.

## Who are the stakeholders involved in the management of the GI system in the EU?

The European GI system is based on **a joint management by private and public stakeholders**. This is one of the key features of the GI system.

The **organisations of producers** (or processors for agricultural products or foodstuffs) are in charge of defining the content of the GI products' specifications as well as of the day-to-day management of the GI. Their tasks can include the management and safeguard of the production regulations, the definition of quality control schedules for the final product, the control of the implementation of the provisions laid down by laws and by regulations, at all levels (farms, producers and traders) on production methods as well as packaging rules. The organisations – also known as the groups - often carry out many activities that small producers would not be able to do separately, such as marketing and legal actions to promote and protect the GI name.

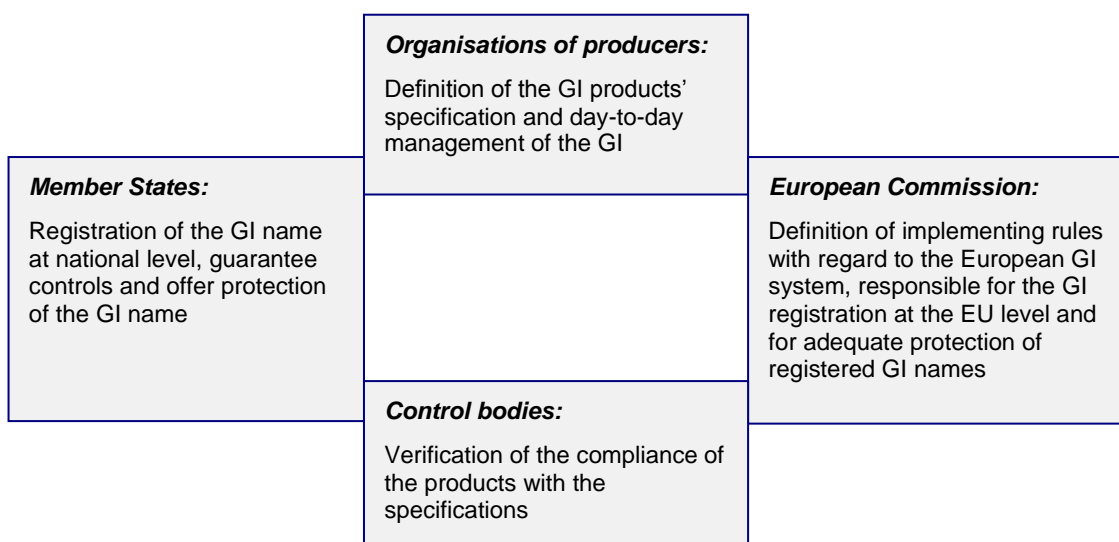
The **control bodies** which can be public or private (in the latter case, they are certification bodies), verify the compliance of the products with the specifications, before placing the product on the market. It must be pointed out that there are two levels of controls, one by the producers and one by an independent external body that ensures that producers are actually complying with the standards they wish to live by. Contrary to other forms of intellectual property, under the GI system the State has an active role as far as it gives a guarantee that the products have certain qualities.

The **Member States** play an important role with regard to the registration of the GI name, the controls that have to be undertaken and the protection of the GI name. As far as the registration of a GI or the modification of a GI specifications are concerned, Member States must scrutinise the applications, provide for objection procedure at national level and ensure publication of the GI specifications. The procedure for GI spirits differs slightly as there is no detailed provision with regard to a national phase, but only for the registration procedure at the EU level. Member States must also designate the competent authority or authorities responsible for controls in respect of official controls and ensure all GI producers is entitled to be covered by a system of official controls. Member States provide official guarantees that the products have been produced in accordance with the GI specification. Finally, Member States play an important role in policing the market and ensuring the protection of the registered GI names.

The **European Commission** defines the implementing rules with regard to the European GI system, as well as some specific rules, for instance on the use of the GI logos. To that end, the Commission is sometimes assisted by a committee of experts composed of Member States representatives: for agricultural products or foodstuffs GIs, the Standing

Committee on Protected Geographical Indications and Protected Designations of Origin; for wine GIs, the Regulatory Committee for Wine; for spirits, the Committee for Spirit Drinks.

The European Commission also plays an important role in the registration of a PDO and PGI or with the modification of a PDO or PGI specification. It must scrutinise the applications, provide for objection procedure and ensure the publication of the principal elements of the request. It also takes the final decision on whether or not to register the name. The European Commission must publish the list of all the GI registered names and, for PDOs and PGIs, the name and address of the authorities and bodies in charge of the official controls. Finally, the European Commission is responsible for ensuring that adequate protection is offered to the registered GI names.



**Case study – the registration of a GI wine in France**

Producers willing to obtain GI protection of a name - an Appellation d'Origine Contrôlée in French - must set up a 'Organisme de défense et de gestion', i.e. a body that will manage the GI once established. They need to prepare a draft product specification and a request explaining why they seek GI protection, justifying the use of the name, the product's reputation bringing in particular historical elements. The link between the GI area and the product must be proven based on natural, technical and human factors that give the characteristics to the product. They must provide an economic analysis. Finally, they also need to define an inspection/control plan. The request and documents are sent to the Institut National de l'Origine et de la Qualité (INAO) which will examine them through different professional bodies. When both the draft GI specification and the inspection/control plans are accepted, they are sent to the French Ministry of Agriculture for approval. A decree is adopted and the request for GI registration is sent to the European Commission for the registration of the GI at the EU level.

## Scope of GI Protection in the EU

### What is the extent of the protection for a GI in the EU?

**The EU legislation provides for an extensive protection of GIs.** The use of registered GIs is restricted to the products that meet the specifications.

Under EC Regulations on GIs, Regulation 510/2006 relating to agricultural products and foodstuffs, Regulation 1234/2007 for wines and Regulation 110/2008 for spirits, **producers are given an exclusive right to use the registered name for their products.** This means that the following is prohibited:

- 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;
- any misuse, imitation or evocation, even if the true origin of the product (or service for GI wines) is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'flavour', 'like', 'imitation' or similar;
- any other false or misleading indication as to the provenance, origin, nature or essential qualities - on the description, presentation or labelling of the product for spirits - on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container, for other GI products - liable to convey a false impression as to its origin;
- any other practice liable to mislead the consumer as to the true origin of the product.

As far as enforcement of the rights is concerned, **the EU has established an administrative enforcement protection – i.e. a system by which the State or public authorities are responsible for policing and ensuring GI protection.** As a result, Member States are obliged to set up the necessary control bodies and procedures. Products that do not meet the requirements of the registered GI specification must be removed from the market.

### Are there any differences in the scope of protection of PDO and PGI?

No, all registered PDOs and PGIs benefit from the same level of protection in the EU.

### How are GI products protected when used as ingredients in other products?

Regulation 510/2006 relating to agricultural products and foodstuffs, Regulation 1234/2007 for wines and Regulation 110/2008 for spirits provide that the protection for GIs must cover



any direct or indirect commercial use of a registered name in respect of products not covered by the registration (see above).

**The EU general labelling rules** apply to the use of GIs as ingredients: the labelling of a foodstuff and related advertising must not be of a kind that could mislead a consumer, particularly as to the nature, identity, properties and composition of the said foodstuff labels should not mislead a purchaser to a material degree (Article 2 §1 a of EC Directive 2000/13/EC). According to the European Court of Justice the criterion must be the presumed expectations of an average consumer who is reasonably well informed and reasonably observant and circumspect. In addition, it is compulsory to list all ingredients, in descending order of weight. It is not compulsory to indicate the quantity of an ingredient, except when it is emphasised on the label, in that case it has to be indicated in the percentage of the total. More importantly, ingredients shall be designated by their specific name, i.e. the GI name when registered.

Producers can also define rules regarding the use of their name within the specifications.

Some Member States have developed their own approach on this question. For instance, the French authorities normally consider that the use of the GI product's name on a sales' denomination is acceptable only if it is the only product of its category (ex: the only cheese) and be of a sufficient quantity. In Italy, a Decree provides that a GI name can be used on a sales' denomination only if the group of producers have agreed to it.

**Case study: Italy - Farina di Neccio della Garfagnana (flour)**

The use of 'Farina di Neccio della Garfagnana' in the sales denomination of a composed food product is allowed only if it is the only ingredient of this category and if the Consorzio of "Farina di Neccio della Garfagnana" producers has given its green light. The Consorzio keeps a register of the user of the GI name and ensure that the use of the GI name as an ingredient is done in a correct way.

**On 16 December 2010, the European Commission adopted 'Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients'**<sup>34</sup>. The guidelines are voluntary. The operators of the food chain do not have to apply them if they do not wish to.

The guidelines provide:

- the conditions under which names registered as a PDO or PGI can be used in the labelling, presentation and advertising of foodstuffs containing such names as ingredients; and
- good practice to ensure that names registered as a PDO or PGI and employed as ingredients in food products are not used in a manner that damages the reputation

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<sup>34</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:341:0003:0004:en:PDF>

of the product benefiting from such a designation or misleads consumers as to the composition of the product produced.

In these guidelines, the European Commission makes a series of recommendations on the use of registered names:

- A name registered as a PDO or PGI can legitimately be included in the list of ingredients of a foodstuff.
- A name registered as a PDO or PGI can be mentioned in or close to the trade name of a foodstuff incorporating products benefiting from a registered name, as well as in the labelling, presentation and advertising relating to that foodstuff, provided that the following conditions are met:
  - The foodstuff in question should not contain any other 'comparable ingredient', which is defined as any other ingredient which can partially or totally replace the ingredient benefiting from a PDO or PGI.
  - This ingredient should also be used in sufficient quantities to confer an essential characteristic on the foodstuff concerned. However, the Commission does not give a minimum percentage to define 'sufficient quantities'.
  - The percentage of incorporation of an ingredient with a PDO or PGI should ideally be indicated in or in close proximity to the trade name of the relevant foodstuff or in the list of ingredients, in direct relation to the ingredient in question.

If those conditions are met, the Commission considers that the European Union terms, abbreviations or symbols, i.e. logos accompanying the registered name can be used in labelling, within or close to the trade name or in the list of ingredients of the foodstuff only if it is made clear that the said foodstuff is not itself a PDO or PGI. If the labelling implies that the foodstuff is a PDO or a PGI when it is not, this will be considered as an undue exploitation of the reputation of the PDO or PGI and result in consumers being misled.

**Example of a pizza with Roquefort cheese (PDO)**

As far as the European Commission is concerned, the trade names 'Pizza with Roquefort' or 'Pizza prepared with Roquefort PDO' would hardly give rise to a dispute. However, the trade name 'Pizza with Roquefort PDO' could give the consumer the impression that the pizza as such was a product benefiting from a PDO and should therefore be prohibited

If an ingredient comparable to an ingredient benefiting from a PDO/PGI has been incorporated in a foodstuff, the name registered as a PDO/PGI should appear only in the list of ingredients, and not on the front pack. Furthermore, characters identical in terms of font, size and colour with the characters used for the other ingredients should be used, in order not to characterise an undue exploitation of the reputation of the PDO or PGI.

Finally, the Guidelines state that provisions on the use of a name registered as a PDO or PGI in the labelling of other foodstuffs should exceptionally be included in the specification for that name only to resolve a specific, clearly identified difficulty and provided they are objective, proportionate and non-discriminatory.

### **How are products protected after transformation (for example, in the case of GI fruits protected are the frozen, canned, dry...)**

Producers can specify in their specification that the GI product will be produced and sold under different 'formats'. In this case, the protection covers all the 'formats' defined in the specification.

#### **Case study: France – 'Pruneaux d'Agen'**

The French product – 'Pruneaux d'Agen' (a dried prune) - has been registered as a Protected Geographical Indication in the EU. The Pruneaux d'Agen's PGI specification provides that the PGI protection covers Pruneaux d'Agen and Pruneaux d'Agen mi-cuits.

Below is an extract of the 'Pruneaux d'Agen' specification: 'The Pruneau d'Agen is from the Prune d'Ente family. It is a dried fruit shaped like an egg, and is a dark-brown/black colour, shiny, not sticky, soft-textured, with an uncaramelised middle somewhere between brown-yellow and golden-yellow in colour, and no mould or other fungus. After undergoing several industrial processes, the most common being rehydration and stoning, Agen prunes are sold in packs of uniform size with a moisture content up to a maximum of 35 % indicated on the packaging. Agen prunes should be whole and fleshy with a wrinkled, unbroken skin, and should have the organoleptic features unique to this particular variety of prunes. Agen prunes are sold either loose (in packs of 5 or 12,5 kg wrapped in polythene film or presented in any other way permitted by current regulations), or prepacked (in plastic bags or on plastic trays, in wooden containers, metallic boxes, wicker baskets or trays, covered with plastic film or presented in any other way permitted by current regulations). Agen prunes must be of a minimum size of 77 or fewer fruits per 500 g. Pruneau d'Agen mi-cuit. is the name given to the traditional product obtained when drying is stopped when the fruit's moisture content falls to between 30 and 35 %'.

### **How difficult is it to get protection in the EU?**

A simple answer to this question is to say that **everything depends on the quality of the registration request**. If the request is well prepared and meets all the requirements laid down in the European regulations or the national legislations, there are normally no major difficulties when seeking GI registration. One important element relates to the length of the GI registration procedure which will depend on the ability of the national or European authorities to deal rapidly with the request, but also on some other elements such as the ability of the organisation of producers to respond to additional questions. The fact that

oppositions are made to a registration request also adds significant time and hurdles to the registration. However, this is something which is common to all forms of intellectual property rights.

### **What are the main challenges met by European producers when seeking registration in the EU?**

As stated above, the main challenge for European producers is to ensure that they have prepared a solid file for the registration of their GI name. The request should meet all the elements required by the national and EU legislations, in particular with regard to the content of the GI specification. GI producers should also ensure that an official control system is in place to guarantee that their product will meet the specification's requirements. They should be available to give more information, if necessary, to the decision-makers. Finally, experience shows that it is very important for producers to talk to all interested stakeholders in order to try to find common ground on a request as this greatly limit the risk of an opposition during the registration phase.

### **What are the main challenges met by non European producers when seeking registration in the EU?**

Non European producers must **ensure that their request meets all the elements required by the EU legislation**, in particular with regard to the content of the GI specification (see above page 31). They will also need to provide proof that the name in question is protected in its country of origin. They should also ensure that an official control system is in place to guarantee that their product will meet the specification's requirements. If necessary, non EU producers will have they have to provide a certified translation of the request in one of the official languages of the European Union. They should be available to give more information, if necessary, to the European Commission.

## Costs and Benefits of GI Protection in the EU

### What are the costs and benefits of GI registration in the EU for a producer?

#### What are the costs of GI registration in the EU for a producer?

Although **there is no registration fee for the registration of a GI in the EU**, it is possible to identify some costs that producers have to bear in the context of establishing, registering and implementing a GI. However, it is impossible to determine precisely these costs as this depends largely on the specificity of each GI. Three elements can be however mentioned:

- **Costs associated to the creation of an organisation of producers**, to carry out the project of registration and carry on the promotion of the GI and the control of its use.
- **Costs associated to the registration procedure, such as:**
  - Costs linked to the definition of the specification (documents to justify the request, possible technical analysis to define the limits of the GI area)
  - Costs associated to the discussion and the exchange of information with the authorities at the Member States' level [for EU producers only]
  - Costs associated to the discussion and the exchange of information with the European Commission
  - Costs of managing oppositions to the registration request, if any. In such a case, the organisation of producers asking for the GI registration will have to spend some time discussing and exchanging arguments with the partie(s) that opposed the registration.
- **Costs associated to controls that have to be performed.** The specification of a GI implies the setting up of regular controls of the whole production process. This means that the producers have to spend money to ensure that their products meet all the requirements set out in the specification.

#### What are the benefits of GI registration in the EU for a producer?

The registration of a GI in the EU provides producers with several benefits, in particular:

- An **extensive protection** of their rights on the name (see page 39).
- **More resources for the promotion** of the GI product. As producers of a registered GI name spend less human and financial resources for the protection of their collective intellectual property rights on the GI name, they have more means to promote their product.

- **The localisation of the production.** One of the important benefits for producers is to know that thanks to the GI protection, the production of their GI products will remain rooted in their defined area and will never be delocalised.
- **An increase in production and the creation of local jobs.**

**Case study: French PGI, 'Lentilles vertes du Puy'**

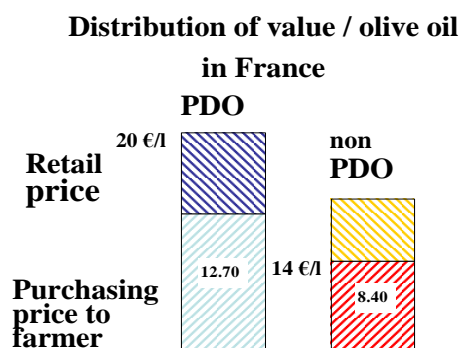
Producers of 'Lentilles vertes du Puy' asked for GI protection in France in 1990. They obtained the registration of their product as a PGI in 1996. As a result, the production has increased from 13.600 quintal in 1990 to 34.000 quintal in 1996 and 49.776 quintal in 2002 (a progression of 273 %!) Meanwhile, the number of producers has almost tripled from 395 in 1990 to 750 in 1996 and 1 079 in 2002.

- **The creation of added value** in return for a genuine effort to improve quality. GIs help producers to obtain a premium price for their products in exchange for guarantees offered to consumers on production methods and quality. Registered GI products are normally perceived by European consumers as up-market products. As a result, they often fetch **higher prices**.

According to a retail benchmark SECODIP study in 2002 in France: the price differential between non GI cheeses and GI cheeses is on average of 30%. This price differential can be much more important for some products, such as wines. In France, the average price differential between GI and non GI wines reaches 230%.

Interestingly, **the added value is better distributed along the production chain.**

**Example: 'Huile d'olive de Nyons' Protected Designation of Origin  
(Olive Oil from France)**



Source : GI Economics – F.Dupont - INRA, INAO,  
Huile d'olive de Nyons

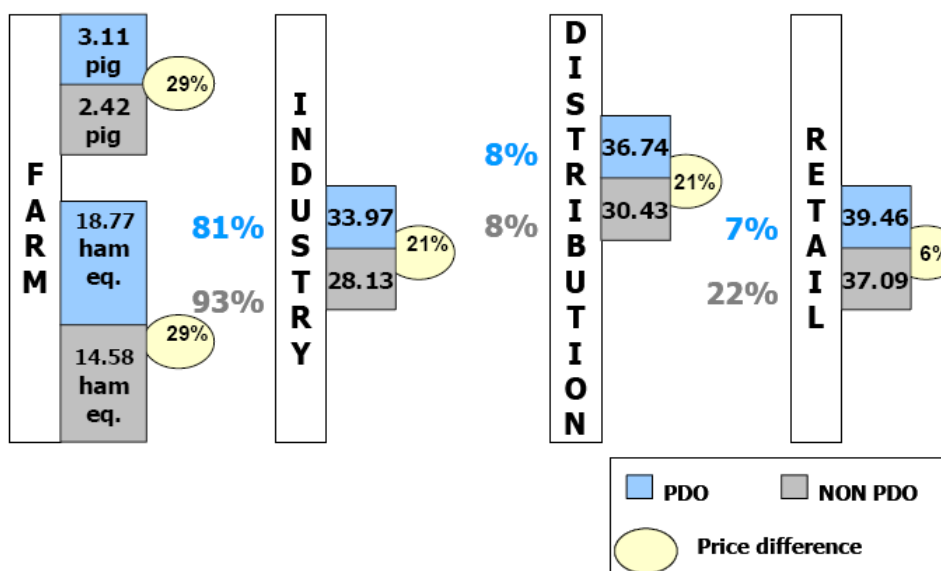
- **In many cases, an increased value for the land within the defined area**
- **The strengthening of producers' position in the commercial negotiations with distributors and retailers.**

**Case study:**

'Dehesa de Extremadura' – Bellota Ham Protected Designation of Origin (PDO)<sup>35</sup>

The following graph comes from a study published in November 2006 by the Joint Research Center of the European Commission on the Spanish Ham 'Dehesa de Extremadura' Protected Designation of Origin (PDO). It shows that there is a price difference at all stages of the supply chain between PDO and non PDO 'bellota' hams.

Graph 13 Prices of "bellota" ham at different stages of the supply chain. (€/kg, 2006)



- **An important and useful market access** tool for producers, especially in countries where consumers are ready to pay a premium price in return for guarantees on the origin of the product and its natural and artisan production methods, such as in the EU. It can be an excellent marketing tool to differentiate the product from the other and highlights its specific characteristics.

<sup>35</sup> - See study published by the European Commission available at:  
[http://foodqualityschemes.jrc.es/en/documents/Casestudies\\_4-DehesadeExtremadura.pdf](http://foodqualityschemes.jrc.es/en/documents/Casestudies_4-DehesadeExtremadura.pdf)

- **An opportunity to develop other activities at local level**, such as local handicraft and tourism. Thanks to the reputation of GIs, producers have been able to promote more than just their products.

**Case study: 'Comté' Cheese PDO<sup>36</sup>**

A study published in November 2006 by the Joint Research Center of the European Commission on the French 'Comté' cheese Protected Designation of Origin (PDO) shows that the PDO has allowed for additional value-adding activities to develop in the area. The French region of Jura has developed touristic activities in relation to 'Comté' production. Thus, in 2002, 115 000 people visited the cheese-making dairies, 30 000 visited ripening cellars and touristic animation is developed with a museum in Poligny and the road of 'Comté'.

## **What are the costs and benefits of having a GI registered for a rural area?**

Experience in the European Union has shown that the registration of a GI name can have a positive impact on the rural areas where the GI production is located.

### **What are the costs of GI registration in the EU for a rural area?**

It is impossible to identify precisely possible costs of GI registration for a rural area. In theory, a registered GI could have a cost on a rural area if the GI production had a negative impact on this area. As an example, there could be rules to prevent houses from being built up in defined GI areas to protect the GI production; this could arguably have a negative impact on the rural area. However, GI producers normally work towards preserving the area where they produce their GI, as this is key to be able to continue producing quality products.

### **What are the benefits of GI registration in the EU for a rural area?**

Several studies have been conducted in the European Union on the impact of GIs on the rural areas. These studies have shown that the registration of a GI can have some benefits for rural areas.

### **Registered GIs can contribute to the creation of jobs and wealth in rural areas.**

Consumers' raising demand for quality food with a specific origin has prompted an increase in GI production and sales in the past years. The GI production system - based on SMEs - creates more jobs than other industrial production processes.

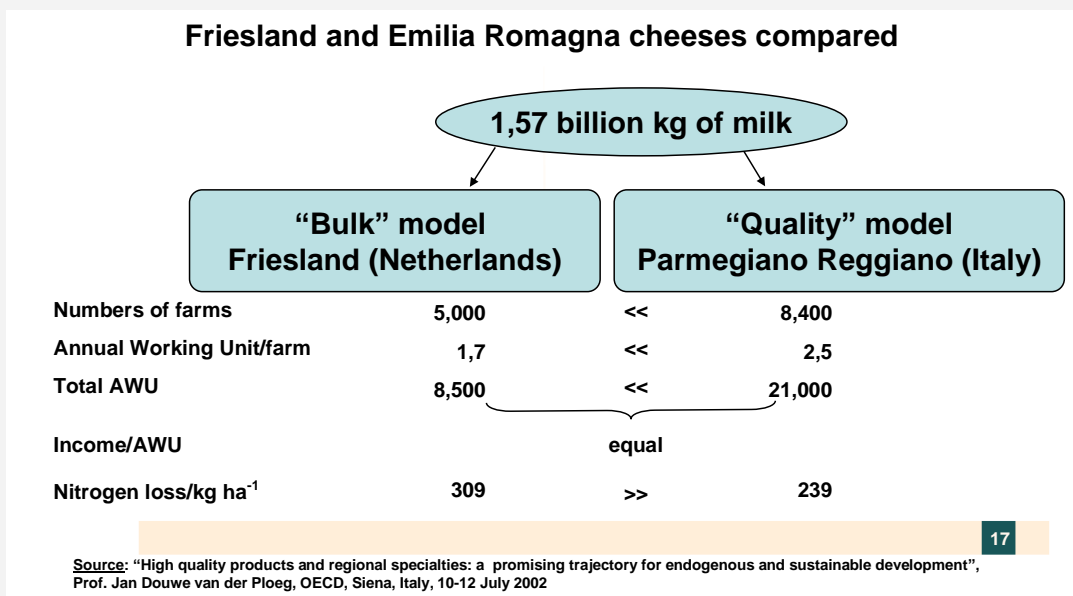
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<sup>36</sup> - See study published by the European Commission available at:  
[http://foodqualityschemes.jrc.es/en/documents/Casestudies\\_3-Comte.pdf](http://foodqualityschemes.jrc.es/en/documents/Casestudies_3-Comte.pdf)



**Case study: Friesland – Emilia-Romagna**

A comparison between two milk producing regions - Friesland in the Netherlands and Emilia-Romagna in Italy - has shown that for the same quantity of milk produced, the ‘Parmigiano-Reggiano’ GI model employs 21,000 people while the Friesland ‘bulk’ model only employs 8,500 people<sup>37</sup>.



**GI registration can promote a sustainable development of rural areas.** The positive impact of GIs often goes beyond the GI production chain. In many case, the GI has provided opportunities to develop parallel activities, in particular in the tourism sector (wine routes, cheese museums, etc.). The successful development of a GIs normally brings more investments in the area and limits the rural exodus and the desertification of the countryside. In addition, a registered GI can provide for the protection of traditional skills and the region’s cultural heritage, the conservation of biodiversity and cultural landscapes and the preservation of natural resources.

**Case study: the ‘ Douro’ Region where the Port appellation of origin comes from**

In the Port Wine “region” tourism and gastronomy run side by side as a whole range of economic and cultural activities have grown around the Port wine appellation of origin. The Port Wine Route has been created which includes a web of places of national heritage, and of scenic, gastronomic, cultural and historic interest. It is comprised of 54 sites of renowned tourist value, notably a UNESCO world heritage site.

<sup>37</sup> - Study conducted by Prof. Jan Douwe van der Ploeg - Wageningen Agricultural University in the Netherlands

## **What are the costs and benefits of GIs for the consumers?**

In the European Union, consumers are increasingly interested in knowing where the products come from and how they are produced. As a result, there has been a positive development of GIs in the past years as consumers are ready to pay a premium price in return for guarantees on the origin and the quality of the product.

### **What are the costs of GI registration in the EU for consumers?**

**Registered GI products are often more expensive than other similar products.** This can be explained by several elements: high quality of the product, use of traditional methods of production, costs associated to the controls that are conducted, etc. Consumers have therefore to pay a higher price for a registered GI product.

### **What are the benefits of GI registration in the EU for consumers?**

**GIs are excellent marketing tools**, which allow consumers to make an informed choice. GIs give consumers guarantees on:

- The origin of the product and its characteristics (ingredients etc.) and traditional production methods
- The quality of the product : confidence that the food has been produced in line with the detailed specification thank to the official controls that have taken place
- The genuine character of the product: only the products that meet the specification can bear the name

GIs help consumers to make their choice thanks to a user-friendly labelling, in particular the GI logos. Consumers can identify and buy products from their own or other specific regions if they choose to and they get the overall information that they need to be able to decide whether designated high quality products provide good value for money.

GIs play a positive role towards the protection of the environment and the biodiversity. They encourage diversification in production, thus preserving the biodiversity, local savoir-faire and natural resources. This ensures that European consumers can enjoy diversity in their food regimes.

Surveys in the EU show that consumers are ready to pay a premium price in return for guarantees on the origin of the product and its' natural and artisan production methods.<sup>38</sup>

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<sup>38</sup> - Eurobarometer surveys at: [http://ec.europa.eu/public\\_opinion/archives/eb\\_special\\_en.htm](http://ec.europa.eu/public_opinion/archives/eb_special_en.htm)

## Control of GIs and Enforcement of GI Protection in the EU

### How are controls undertaken by both public and private bodies?

**All GI products registered are subject to controls** to ensure that the requirements of the registered specification are met.

The European Regulations on geographical indications - Regulation 510/2006 relating to agricultural products and foodstuffs, Regulation 1234/2007 for wines and Regulation 110/2008 for spirits - provide that verification of compliance with the specifications, before placing the product on the market, must be ensured by a control body which can be a public body or a private body. Each GI producer's organisation must nominate an inspection body.

Private inspection bodies are required to be accredited to European Standard EN 45011 or ISO/IEC Guide 65 (General requirements for bodies operating product certification systems).

Public body must offer adequate guarantees of objectivity and impartiality, and have at their disposal the qualified staff and resources necessary to carry out their functions.

The EU Regulations request that GIs which come from a third country should also be subject to verification of compliance with the specifications in the technical file by one or more public authorities designated by the third country, and/or one or more product certification bodies.

The costs of the verifications are borne by the operators which are subject to it.

### Case study 1: The three steps of the controls for the French cheese 'Comté' PDO

#### 1 - Self control by producers of the quality of their products.

#### 2 - Controls by the organisation of producers – 2 inspectors from the 'Comté' GI body

##### Regulatory control

Ensure respect of production rules by all the stakeholders of the chain: milk, cheese making, maturation process

To carry this work, the inspectors receive a delegation of competence from the national anti-fraud authorities

##### Conformity control

Analytical and organoleptic controls of cheeses taken from companies in charge of the maturation process.

There are tasting experts who give their verdict on the quality of the products. Based on their report, a special committee meets every month to decide on the ability to use the PDO name Comté.

To carry this work, the Comté inspectors receive a delegation of competence from the national GI body, the INAO

##### Controls of retailers

Inspectors visit supermarket stores to control the labelling and the quality of the product

#### 3 - Controls by an external body

A control plan is defined by the organisation of producers and the external body. It contains a list of controls that have to be undertaken to ensure that the product meets the GI specifications. It also defines the practical aspects of the controls, such as the percentage of producers that will be controlled, the frequency of the controls. It covers organoleptic controls, including tasting sessions by experts who give their verdict on the quality of the products.

### **Case study 2: The Italian GI wines system of controls**

System of controls on all the GI producers and all steps of the wine production process: from the grapes to bottles. Strict and detailed plans of controls are defined. They cover 2 aspects:

#### **Controls based on documents**

Wine producers must keep track of all the information regarding the amount of grapes produced, the quantity of GI wine produced and the number of GI wine bottles. Controls of all the relevant documents are done based on vineyards registers, production notifications, stocks, etc... These controls are performed on 100% of the production.

#### **Inspection Controls**

The inspection controls are carried out by private bodies on grapes producers, transformation farms and bottling & packaging firms. Controls are made on a significant sample which shall represent at least 25% of the annual notified production in order to compare documentary information and the real situation. On the vineyard, there are checks on the quality of the production and on the conformity of the agronomic situation with regard to the GI specification's requirements. In the wine cellar, the use of the authorised oenological practices is controlled and tests on wine and musts samples are carried out. At the bottling phase, there are chemical, physical and organoleptic analysis and checks on the labelling.

These controls are performed on at least 25% of the producers and 25% of the labels.

## **What are the traceability requirements for GIs in the EU?**

Traceability requirements are usually included in the product specification. Under EU rules, operators must be able to identify:

- the supplier, quantity and origin of all batches of raw material and/or products received;
- the recipient, quantity and destination of products supplied;
- correlation between each batch of inputs and each batch of outputs

Each producer can set up additional requirements and is in charge of the traceability of its own product.

### Case study: The 'Prosciutto di Parma' PDO Traceability System

- On the ham: Breeding tattoo the breeder puts a special tattoo on both legs of the young pig within 30 days of birth of the animal
- Slaughterhouse brand: in the slaughterhouse every fresh trimmed leg is checked and branded with a mark permanently identifying it.
- Seal: Then there is the metal seal showing the C.P.P. initials and the date of the beginning of curing.
- The ducal crown brand: Finally, the five-point ducal crown brand shows the identification code of the producer where the curing has been carried out. It is stamped under the strict control of the I.P.Q. inspectors and is the final guarantee of the quality of the ham
- Ducal Crown mark fire-branded on whole hams and on de-boned ham is cut in more than two parts, each part has to have the mark.
- Ducal Crown label on the packaging of de-boned and pre-sliced hams.
- The name of the product: 'Prosciutto di Parma' (except for export to Canada where Parma ham is indicated as 'The original prosciutto').
- Product of Italy.
- If the producer himself is commercialising the product, his name appears on the label.
- If not, a sanitary number identifying the producer (i.e. I 515 L Cee) [always I for Italy + a number (1 to 4 figures) + L for meat product + Cee] is present on the label as well as the complete name and address of the company/person who commercialises the product (exporter, importer or distributor).
- The label must bear the following wording: 'Prosciutto di Parma'. Name of origin protected in compliance with Italian law of February 13, 1990 n. 26 & EU regulation n. 1107/96.
- The sentence 'Guaranteed by the Italian Ministry of Agricultural and Forestry Policies under art. 10 of EU Regulation 510/06' is added on the label beside the aforementioned sentences



## What happens if a GI product is counterfeited in the EU?

When a GI product is counterfeited in the EU, there are a wide range of actions that can be taken. In general, **civil and/or penal actions can be taken**. However, procedure and sanctions vary from one Member State to the other.

In some EU countries, penal actions are available, for instance in France. However, the actions are not specific to GIs. The GI owners must demonstrate either that consumers are misled on the origin or the quality of the product or that there is an infringement of their intellectual property rights. Actions before civil courts are also available to GI owners that have identified an abuse of their registered name.

Under European legislation 1383/2003 of 22 July 2003<sup>39</sup>, customs authorities can take action against goods suspected of infringing certain intellectual property rights, including GIs. Custom officials can seize products that seem to violate GI rules and can keep them in custody for a period of up to 10 days at the request of the GI owners. This leaves enough time to GI owners to take legal action before the competent tribunal.

### What are the sanctions to infringements?

The sanctions to infringements recognised by EU courts vary largely from one EU Member State to the other. Civil actions normally lead to the destruction of the counterfeited goods and, in some cases, to fines being imposed on the counterfeiters. Penal actions can lead to criminal sanctions. However, in practice, the sanctions are based on fines.

#### **Case study: Destruction of fake 'Champagne' in Belgium in 2006**

On 5 September 2006, the Belgian custom authorities destroyed 600 bottles of counterfeited 'Champagne' coming from Armenia. Further to the discovery of these counterfeited goods in the Belgian port of Anvers in May 2006, the Belgian custom authorities seized the products, contacted the GI owners (the Comité Interprofessionnel des Vins de Champagne) which took legal action before a Belgian court. The Court authorised the destruction of these counterfeited goods.

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<sup>39</sup> - [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_196/l\\_19620030802en00070014.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_196/l_19620030802en00070014.pdf)

## GIs Protection Outside of the EU

### How are GIs products protected outside of the EU?

Most countries have a legal framework for the protection of GIs. However, the legal instruments and the level of protection available vary considerably from one country to another. A product can be protected through national laws and multilateral or bilateral agreements.

For a detailed presentation of GI Laws around the world (except the EU), please see the handbook on GIs published on June 27<sup>th</sup> 2007 by the European Commission available at: <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/geographical-indications/>

### What protection is granted to GI products outside of the EU through national laws?

**Over 84 countries recognise GIs as a separate form of intellectual property (i.e. have a *sui generis* system of protection).** The EU – which has 27 Member States - is not counted as one country. 77 of these 84 countries have registration systems.

**There are 56 countries**, notably the USA, Canada, Australia and Japan, **which do not have specific laws for the protection of GIs but protect them as certification trademarks, collective trademarks or just as ordinary trademarks.** Out of these countries, 11 have registered and protected GIs.

### What are the sanctions to infringements outside the EU?

Legislations vary from a country to another. However, most of the legislations contain penal provisions and provisions on the confiscation of goods illegally marked with a GI. There is a generally recognised rule that the holder of the right to use a GI is authorised to bring an action against an infringing party and seek:

- prevention of the acts of infringement,
- compensation in damages,
- confiscation of illegally produced goods and the equipment used for production of the said goods,
- destruction of all the medium, as packing materials, including the registered name.

**Some countries have more severe punishments for unlawful use of GI.**



**Example 1: India.** The court can impose a sentence of imprisonment of a maximum of a 6 months term or a fine of a maximum of fifty thousand rupees for applying false GIs, for selling goods to which false GIs are applied or for falsely representing GIs as registered. In case of second or subsequent offences, the punishment increases to one year in prison and double the amount of money fined. Any person found guilty of the falsification of entries in the register or in improper description of businesses as connected with GIs Registry would be punished with imprisonment for a term extended to two years and with a fine.

**Example 2: Thailand.** A person using a GI without the right to do so is liable to one year of imprisonment maximum and/or a fine of 20.000 Baht.

**Example 3: Australia.** Unauthorised use of a GI for wine (sale, import or export of wines with false or misleading descriptions and presentation) is subject to criminal prosecution. Substantial penalties up to two years jail and/or \$60,000 fine may be incurred for false or misleading description or presentation of wine.

**Case study: The case of 'Basmati' in the United States**

Basmati is a variety of rice from provinces of India and Pakistan. The problem arose when the US Patent Office issued patents for three new strains of rice in 1997. These strains could be sold under the name 'Basmati', referring to a particular form of rice and associated with the Indian and Pakistani plains. In 1998, the US rice Federation submitted that the term 'Basmati' was generic and referred to a specific type of rice.

In response, US and Indian civil society organisations collectively filled a petition seeking to prevent US-grown rice from using the word 'Basmati'. The US department of agriculture and the US Federal Trade Commission rejected the petition in May 2001. Neither considered that the labelling of rice as 'American-grown Basmati' was misleading, and deemed 'Basmati' to be a generic term. After the protest of India and Pakistan against the use of 'Basmati', the US patent office disallowed the patent-holder from using the generic name 'Basmati'.

**What protection is granted to GI products outside of the EU through International agreements?**

There are numerous international treaties relevant for protection of GIs (see Historical Developments).

**a. The 1958 Lisbon Agreement for the Protection of Appellations of Origin<sup>40</sup>**

The Lisbon Agreement for the Protection of Appellations of Origin (AOs)<sup>41</sup> was **the first specific international treaty providing for the protection of AOs**. The 'Lisbon

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<sup>40</sup> There are 32 contracting parties to this agreement. See: [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=10](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10)

Agreement” provides a definition of the appellation of origin. It gives two basic requirements for an AO to be protected:

- It should be protected in its country of origin, and
- It should be registered in the International Register of Appellations of Origin managed by the WIPO.

Under the Lisbon Agreement, countries are free to adopt their own system for designating appellations, by judicial and/or administrative decision. Once registered, a GI is protected in other Member states. The duration of the protection given by international registration is coterminous with the protection as an appellation of origin in the country of origin. There is, therefore, no requirement for international renewal;

Within the WIPO, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) works on the development of international norms to protect Appellations of Origin.

#### **b. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement)**

**The TRIPs Agreement is the first multilateral treaty dealing with GIs** as such. It was adopted at the end of the Uruguay Round of negotiations and provided for the incorporation of intellectual property in the multilateral trading system. The TRIPs Agreement contains a section on GIs. Under this Agreement, WTO Members are obliged to protect GIs but it leaves a large discretion to each Member to decide how to protect them.

##### **i. What is the definition of a GI under the TRIPs agreement?**

**Article 22 of the TRIPs Agreement** provides a definition of GIs, from which it can be deduced that:

- in order to be protected a GI needs to be ‘an indication’, but not necessarily the name of a geographical place (therefore, iconic symbols or emblems like the Eiffel Tower or the Taj Mahal could be protected);
- denominations that are not ‘direct geographical names’ but traditional names can also be protected (among them ‘Basmati’ or ‘Feta’);
- the name of a country could be a GI;
- GIs apply to any good, whether natural, agricultural, agro-industrial or manufactured but not services;
- the only condition is that the ‘indication’ in question has to identify goods as originating in the territory of a Member, a region or a locality of that territory.

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<sup>41</sup> [www.wipo.int/lisbon/en/](http://www.wipo.int/lisbon/en/)

**ii. Do all GIs have the same level of protection under the TRIPs agreement?**

The TRIPs Agreement contains **three levels of protection**:

A minimum standard of protection for all GIs, whatever the nature of the good to which it is applied, is established by Article 22 of the TRIPs Agreement. The scope of protection is limited to the prohibition of the use of GIs by producers not located in the region designated by the particular GI.

The additional protection for both wines and spirits (Article 23) includes 3 elements:

- the provision of the legal means for interested parties to prevent the use of a GI identifying wines and spirits, not originating in the place indicated by the GI;
- the possibility to refuse or invalidate the registration of a trademark for wines or spirits which contains or consists of a GI identifying wines or spirits at the request of an interested party;
- the call for future negotiations aimed at increasing protection for individual GIs for wines and spirits.<sup>42</sup>

An 'extra-additional' protection by the TRIPs Agreement for wines only emphasises the need to accord protection for each GI for wines in the case of homonymous indications and the establishment of a multilateral system of notification and registration of GIs for wines eligible for protection in the jurisdictions of those WTO Members participating in the system.

Wines	<ul style="list-style-type: none"> <li>• Emphasise the need to accord protection for each GI for wines,</li> <li>• In the case of homonymous indications, and</li> <li>• The establishment of a multilateral system of notification</li> </ul>
Wines & Spirits	<ul style="list-style-type: none"> <li>• Provision of the legal means;</li> <li>• The possibility to refuse or invalidate the registration of a trademark</li> </ul>
All GIs	<ul style="list-style-type: none"> <li>• Prohibition of the use of the GIs by producers not located in the region</li> </ul>

The TRIPs Agreement also provides for **exceptions to the protection of GIs**:

Article 24.4: the user can continue to use the name of a GI if the name has been used:

- for at least 10 years preceding the date of the Ministerial Meeting concluding the Uruguay Round<sup>43</sup> or

<sup>42</sup> Article 23 of the TRIPs Agreement

<sup>43</sup> 15 April 1994.

- 'in good faith' for a shorter period of time preceding April 15, 1994,

Article 24.5 adds two exceptions in relation to registration of trademarks. Section (a) states that **a mark that was registered in good faith before the TRIPS Agreement** will continue to be a valid trademark. The second exception, section (b), provides that **a trademark consisting of a GI is valid as long as it was registered before the geographical name was protected in its country of origin.**

Article 24.6 provides for another exception, which allows the use of GIs if they have become generic terms.

### iii. How does the TRIPS agreement deal with enforcement?

**Enforcement** of intellectual property rights is dealt with in Part III of the TRIPS Agreement.<sup>44</sup> Article 41 of the TRIPS Agreement calls for effective remedies and procedures against infringements of GIs and stipulates that they may not be used obstructively or otherwise abused. Article 42 of the TRIPS Agreement provides that Members must ensure that civil judicial proceedings cover all the rights protected under the TRIPS Agreement, including GIs.

### c. The EU is also party to the Anti-Counterfeiting Trade Agreement (ACTA)

**The ACTA negotiations were finalised at the end of 2010.** GIs are included in the scope of the agreement.

The Anti-Counterfeiting Trade Agreement is a plurilateral agreement aiming at establishing international standards on intellectual property rights enforcement. The negotiating countries are Australia, Canada, the European Union, Japan, Mexico, Morocco, New Zealand, the Republic of Korea, Singapore, Switzerland and the United States.

The ACTA is not in force yet; signature and the ratification of this international agreement are ongoing. When ratified, the ACTA will become a legal instrument independent from the WTO or the WIPO. Countries, which do not take part to the initial negotiations, will be able to join on a voluntary basis.

### What protection is granted to GI products outside of the EU through bilateral agreements?

The EU has signed and continues to negotiate many bilateral and plurilateral trade and cooperation agreements with third countries.

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<sup>44</sup> Part III of the TRIPs Agreement, Articles 41-61.

In the past, the EU negotiated sector specific agreements on wines and spirits that included provisions on the protection of GIs.

- **Bilateral Agreements on the protection of wines** with: Albania, Australia, Bosnia-Herzegovina, Canada, Chile, Croatia, Former Yugoslav Republic of Macedonia, South Africa, USA
- **Bilateral Agreements on the protection of spirits** with: Albania, Bosnia-Herzegovina, Mexico, Canada, Chile, Croatia, Former Yugoslav Republic of Macedonia, South Africa

Nowadays, the EU negotiates agreements covering all types of GIs: agricultural products and foodstuffs, as well as wines and spirits. It has recently chosen to limit the number of GIs it asks protection for in the third country and, as a result, establishes shortlists of GI products that it wants to protect.

The EU negotiates three types of agreements covering GIs:

- **Specific Agreements on the protection of GIs.**  
An example is the bilateral agreement for the protection of GIs for agricultural products and foodstuffs between the EU and Switzerland concluded in 2010. 818 GIs registered in the EU and 22 GIs registered in Switzerland are covered by the agreement. The ratification of this agreement is currently ongoing.
- **Trade agreements including a chapter on GI.**  
An example of these agreements is the Free Trade Agreement (FTA) between the EU and the Republic of Korea. The negotiations was launched in 2007 and finalised in 2009. The agreement is currently being ratified. The EU and the Republic of Korea decided to protect a limited number of GIs for agricultural products and foodstuffs, as well as wines and spirits (see Annexes 10a and 10b of the Agreement). The EU decided to start negotiating the protection of a shortlist of products with GIs, and not the entire list, in other bilateral agreements.
- **Trade agreements including a clause stating that a specific bilateral agreement on the protection of GI will be negotiated after the ratification of the trade agreement.**  
An example is the Association Agreement on improving bilateral trade conditions for products from the agri-food and fisheries sector between the EU and Morocco, being currently ratified. The agreement also provides that negotiations of an ad hoc agreement on the protection of all geographical indications will be opened between Morocco and the EU when the Association Agreement enters into force.

## What are the main challenges met by European and non European producers when seeking protection outside of the EU?

The first difficulty for GIs producers is to understand what legal framework is available in the country where protection is sought as well as the level of protection that they will enjoy. Producers need to understand whether the protection covers names used in translation and/or names used with expressions such as 'like', 'style'. They also need to know if an administrative enforcement procedure is available. If not, producers will have to monitor the foreign market to detect possible abuses by operators and take all necessary legal actions to assert their rights. This is an important first step as the level and modalities of protection differ widely if the producers have to rely on unfair competition and consumer protection acts, passing off actions, trademark laws or a *sui generis* protection of GIs with or without registration.

Some GI producers struggle to secure protection in many countries, as they are considered generic or semi-generic names, hence not entitled to protection.

### **Sui generis protection vs. trademark protection of GIs**

#### **The experience of GI producers**

In countries where there is a ***sui generis* system** which provides for the registration of GIs, producers do not encounter major difficulties to protect their GI names. They normally need to submit all required documents translated in the local language if necessary. Often, they must use a local agent to facilitate the registration.

The experience of many EU GI producers shows that it is extremely difficult and often very costly for GI producers to protect their GIs via **trademark systems**, passing off actions or on the basis of unfair competition and consumer protection acts.

#### **The following difficulties can be highlighted:**

**Prior trademark registrations:** in some countries, GI producers are confronted with registered trademarks which contain their GI names. According to the principle of "first in time, first in right" applicable to trademarks, it is therefore not possible for producers to seek trademark registration of their name as it is already legally owned by another private party. In such cases, producers have only two options: either to launch proceedings to obtain the cancellation of the registered trademark or to enter into negotiation with the owner of the trademark in order to buy it.

**The use of the trademark:** in most countries, trademarks are protected if they are registered. However, for the protection to be effective, the trademark must be used on the market. Therefore, even if the producers register their GIs as trademarks as a preventive

measure, if they do not use the name on the market, they face the prospect of a cancellation of the trademark for non-use.

**The ability to register a geographical name:** most trademark laws prohibit the registration of a name with a geographical meaning. Therefore, GI names are often protected via a collective or a certification mark when such legal concepts exist. When they are not available, GI producers have often been forced to seek a limited protection - for their logo only - via a figurative trademark registration.

**The registration of composed GI names:** some intellectual property offices have accepted to register a certification mark covering composed GI names (ex: Ossau-Iraty, Parmigiano-Reggiano, etc). However, the registration did not always cover the protection of the two individual terms. Consequently, the registration only helps producers to stop abuse of the composed name but does not protect against the abuse of one of the two names used on its own. This greatly limits the scope of the protection granted to the GI name.

A certification mark certifies the origin, quality, mode of manufacture or other elements of a good. As a result, some countries have made it clear that **the use of a certification mark on product other than the GI product itself is prohibited**. More importantly, such use – on promotional materials, for instance, such as pens, hats, etc. - can lead to the invalidation of the registration.

**The scope of the protection given by a trademark registration:** trademark regimes do not provide for a protection as comprehensive as the one offered by the EU sui generis GI system. In general, trademark registration does not cover translation, nor does it prevent the use of the name with 'de-localisers'" (i.e. 'Californian Champagne') or expressions such as 'like', 'style', etc.

**The costs associated to the registration of a trademark:** the experience of EU GI producers shows that it is, in general, more costly to obtain legal protection of GIs via trademark systems than via a sui generis regime. In addition, legal costs increase significantly due to problems met with local patent and trademark offices. It is also very expensive for GI producers to demonstrate that a name is neither generic nor descriptive.

**Effective protection under a trademark regime:** although a trademark registration provides for an exclusive right on the registered name, EU producers sometime forget that, in most countries, they must continue to assert their rights. They need to carry out a regular monitoring of the markets where the trademark is protected. They need to be ready to launch all necessary legal actions (opposition to trademark registration for instance) to protect their intellectual property right. Failure to do so would significantly undermine the right.

## Historical Developments

### What have been the main historical steps in the protection of GIs in Europe?

Over the years, the European Union (EU) has adopted a comprehensive legal framework for the protection of intellectual property rights. With regard to the protection of GIs, the EU has set up a *sui generis*<sup>45</sup> system for the protection of GIs in the 27 Member States.

**At the EU level, the *sui generis* protection of GIs dates back to 1970 for wines, 1989 for spirits and 1992 for other agricultural and foodstuff products.**

It started with the adoption of several legal acts regulating product designations for **wines** aimed at the protection of geographical names for 'quality wine produced in specified regions'<sup>46</sup>. For the first time, in the context of the 1970 Common Market Organisation for wines, the European Communities offered a protection of wine GIs recognised at national level<sup>47</sup>. The last reform of the European wine Regulation introduced important changes with regard to the protection of GI wines in the EU (see Part 5) which is now governed under Regulation 1234/2007.

A similar 'specific product' approach was followed for **spirits** in 1989 with the adoption of provisions on the protection of GIs for spirits in Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks modified by Regulation 110/2008.<sup>48</sup>

The need for protection of designations of origin for cheeses was recognised in 1951 and resulted in conclusion of the international Stresa Convention.<sup>49</sup>

The necessity of a common approach to protection GIs for **agricultural products and foodstuffs** became apparent almost immediately after the Cassis de Dijon 1979 ruling of the European Court of Justice. In accordance with this judgment, the EC Member States were requested to recognise that food standards were equivalent on the territory of the EC,

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<sup>45</sup> *Sui generis* is a Latin expression, literally meaning *of its own kind/genus* or unique in its characteristics. The *sui generis* system of protection of GIs is a system with a specific law that considers GIs as a specific, separate intellectual property right.

<sup>46</sup> Council Regulation 817/70 of 28 April 1970 laying down special provisions relating to quality wines produced in specified regions, OJ L 99, 5/05/1970, p. 20, no longer in force; Council Regulation 338/79 of 5 February 1979, OJ L 54, 5/03/1979 p. 48, no longer in force; Council Regulation 823/87 of 16 March 1987, OJ L 84, 27/03/1987 p. 59, no longer in force.

<sup>47</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0012:0025:EN:PDF>

<sup>48</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:039:0016:0054:EN:PDF>

<sup>49</sup> See Part 9 for more information on the 1951 Stresa Convention.



as the Court found that technical standards could not be used by Member States to stop the entry into their markets of goods legally produced and marketed in another Member State.

Besides, after Cassis de Dijon, there was a strong movement from small scale producers of typically local products for some form of protection from generic foodstuffs produced by large scale manufacturers. Intense pressure from the 'agricultural' Member States resulted in the adoption of EC Council Regulation 2081/92 on the protection of protected geographical indications (PGIs) and protected designations of origin (PDOs)<sup>50</sup>.

Regulation 2081/92 established two categories of protected names: Geographical Indications and Designations of Origin. It gave GI holders exclusive rights to use the geographical name for products that comply with the registered specifications and to prevent any direct or indirect commercial use of the protected name to comparable products.

The European Regulation on PDOs and PGIs was modified in March 2006. The new Regulation 510/2006<sup>51</sup> brought up several important changes. First, Member States have been given a more important role in the registration of GIs. They now carry out the examination of the request, working within regulations and guidelines set at EU level. The Commission then scrutinises of the main elements of the request included in a so-called 'single document' which is published in the EU Official Journal) to ensure that applications satisfy the conditions laid down by the regulations and that the approach is uniform across the 27 EU Member States. A further change is that, partly as a result of a ruling by the World Trade Organisation (WTO) in 2005, the EU is able to receive applications from producers in third countries sent directly to the Commission for registration of product names under the EU system. Previously these producers had to pass via their national authorities, which could be unwilling or unable to process the application.

A similar approach was adopted for both wine and spirits GIs in 2008 with the reform of the wine and spirits regulations (see above Part 4).

## **What have been the main historical steps in the protection of GIs in the international arena?**

International protection of GIs started with the **Paris Convention on the Protection of Intellectual Property of 1883**,<sup>52</sup> which included 'indications of source or appellations of origin' as separate objects of protection. The Paris Convention identifies GIs as a separate intellectual property right, but does not clearly define this concept. It provides for some

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<sup>50</sup> - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992R2081:FR:HTML>

<sup>51</sup> - [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l\\_093/l\\_09320060331en00120025.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_093/l_09320060331en00120025.pdf)

<sup>52</sup> The Paris Convention for the protection of industrial property was agreed in 1883 and complemented by the Madrid Protocol of 1891. As of 5 May 2007 the Paris Convention had 171 signatory states. See on <http://www.wipo.org>, "Treaties", "Intellectual Property Protection Treaties", "Paris Convention".

remedies in respect of unlawful use of indications of source on goods, meaning that no indication of source may be used if it refers to a geographical area from which the products in question do not originate.

**The 1891 Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods**<sup>53</sup> is specific to indications of source, as it was the first multilateral agreement to provide specific rules for the repression of false and deceptive indications of source. The Madrid Agreement did not add much to the protection already given by the Paris Convention, but it extended protection to deceptive indications of source in addition to false indications. A deceptive indication of source can be the true name of the place where the good originates from, but nevertheless confusing the purchaser in respect to the true origin and quality of the good.

**The 1951 Stresa Convention**<sup>54</sup> provided protection to designations of origin only to one specific categorie of products, i.e. cheese. This Convention attracted a limited number of signatories (only European countries). It established for the first time the protection of the use of appellations of origin and denominations of products. This principle was confirmed in 1958 by the signature of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.<sup>55</sup>

**The Lisbon Agreement for the Protection of Appellations of Origin (AOs) of 1958** was the first specific international treaty providing for the protection of AOs and establishing International Register for their protection. The World Intellectual Property Organisation (WIPO) started work on the preparation of a new international treaty for the protection of appellations of origin and indications of source in 1974. However, the work on the draft treaty was terminated, when it became obvious that further progress on GIs would require the revision of provisions of the Paris Convention. In 1975 WIPO issued a proposal for a **Model Law on Geographical Indications**.<sup>56</sup> A model law is not a draft international treaty. It is intended for use in national law as a standard or template, which can be adjusted or adapted to local conditions. Since 2008, WIPO is working on the revision of the Lisbon Agreement for the Protection of Appellations of Origin. In September 2008, it established a Working Group responsible for exploring possible improvements of the procedures under this Agreement. The Working Group is discussing proposed amendments of the Agreement concerning in particular:

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<sup>53</sup> The Madrid Agreement had a membership of 56 signatory states as of 15 January 2011. See: <http://www.wipo.int/madrid/en/>

<sup>54</sup> International Convention on the Use of Appellations of Origin and Denominations of Cheeses, Journal Officiel de la Republique Française, N° 5821, 11 June 1952.

<sup>55</sup> The Agreement for the Protection of Appellation of Origin and their International registration was concluded in Lisbon on 31 October 1958. As of 5 May 2007, there were 32 states party to the Agreement. See on <http://www.wipo.org>, "Treaties", "Intellectual Property Protection Treaties", "Lisbon Agreement".

<sup>56</sup> Model Law for Developing Countries on Appellations of Origin and Geographical Indications, 1975, PJ/91/2, January 1975. WIPO Monograph "Model Law for Developing Countries an Appellation of Origin and Indications of Source". Geneva, 1975, Sign. 6/W.

- the introduction of the concept of GI based on the WTO TRIPS Agreement definition in parallel to the existing concept of appellation of origin
- the scope of protection to be given
- The relationship with other intellectual property rights
- the registration procedures in order to simplify them

The most significant step in international protection of GIs came through the **WTO Agreement on Trade-Related Aspects of International Property Rights (TRIPS)** with specific section dedicated to GIs. This was the first multilateral text dealing with GIs as such.<sup>57</sup> When concluding the TRIPs Agreement, it was negotiated that further discussion will be undertaken in view of facilitation of GI protection for wines. The Fourth WTO Ministerial meeting, held in Doha in November 2001, addressed the issue of GIs and identified two distinct issues relevant to protection of GIs:

- the extension of the higher level of protection for wines and spirits to other goods; and
- the establishment of a multilateral register of GIs for wines and spirits.

Both issues are yet unresolved. With regard to the extension of protection, there are clearly two opposing positions: for extension and against, arguing that this issue either is outstanding or is not part of the mandate. As to negotiations on multilateral register, several proposals have been tabled with the WTO,<sup>58</sup> but no compromise has been found yet.

The future of protection of GIs in the WTO is linked to the general progress in agricultural negotiations and capacity of WTO developing country members to take advantage of this developmental tool.

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<sup>57</sup> See Part 8 with information on protection of GIs under the TRIPs Agreement.

<sup>58</sup> The three proposals on multilateral register are from the EU, the US and Hong Kong: All documents can be found at [http://www.wto.org/english/tratop\\_e/trips\\_e/gi\\_background\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/gi_background_e.htm)



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