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## ANNEX B: GEOGRAPHICAL INDICATIONS

### CONTENTS

|             |  |           |
|-------------|--|-----------|
| <b>B.1.</b> | <b>INTRODUCTION</b> .....  | <b>3</b>  |
| 1.1.        | THE LEGAL FRAMEWORK: COMMUNITY PROTECTION OF GEOGRAPHICAL INDICATIONS.....                                       | 3         |
| 1.2.        | POLICY CONTEXT.....  | 4         |
| <b>B.2.</b> | <b>PROBLEM DEFINITION</b> .....  | <b>5</b>  |
| 2.1.        | PROBLEM IDENTIFICATION .....   | 5         |
| 2.1.1.      | <i>Objectives of present legislation</i> .....   | 5         |
| 2.1.2.      | <i>Problems raised</i> .....   | 6         |
| 2.2.        | WHAT ARE THE UNDERLYING DRIVERS OF THE PROBLEM? .....  | 48        |
| 2.3.        | WHO IS AFFECTED, IN WHAT WAYS AND TO WHAT EXTENT? .....  | 50        |
| 2.4.        | HOW WOULD THE PROBLEM EVOLVE WITHOUT A CHANGE IN POLICY? .....   | 50        |
| 2.5.        | DOES THE EU HAVE THE RIGHT TO ACT? .....   | 52        |
| <b>B.3.</b> | <b>OBJECTIVES</b> .....  | <b>52</b> |
| 3.1.        | GENERAL OBJECTIVE .....  | 52        |
| 3.2.        | SPECIFIC OBJECTIVES.....   | 53        |
| 3.3.        | OPERATIONAL OBJECTIVE.....   | 54        |
| <b>B.4.</b> | <b>POLICY OPTIONS</b> .....  | <b>54</b> |
| 4.1.        | OPTION O: NO CHANGE IN PRESENT EU ACTION – STATUS QUO.....   | 54        |
| 4.2.        | OPTION A: PROTECTION THROUGH TRADEMARK SYSTEM.....   | 54        |
| 4.2.1.      | <i>Basic approaches</i> .....  | 54        |
| 4.2.2.      | <i>Screening for technical and other constraints</i> .....   | 58        |
| 4.2.3.      | <i>Assessment of effectiveness, efficiency and consistency</i> .....   | 58        |
| 4.3.        | OPTION B: SIMPLIFICATION OF CURRENT EU SYSTEMS, INCLUDING STREAMLINING OF PROCEDURES.<br>59                      |           |
| 4.3.1.      | <i>Basic approach</i> .....  | 59        |
| 4.3.2.      | <i>Technical constrains</i> .....  | 60        |
| 4.3.3.      | <i>Assessment of effectiveness, efficiency and consistency</i> .....   | 60        |
|             | OPTION B1: MERGING OF THE 2 DEFINITIONS FOR GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OR ORIGIN.<br>.....        | 60        |
|             | <i>Basic approaches</i> .....  | 60        |
|             | <i>Screening for technical and other constraints</i> .....   | 61        |
|             | <i>Assessment of effectiveness, efficiency and consistency</i> .....   | 61        |
|             | OPTION B.2: MERGING OF THE 3 EXISTING REGISTERS: WINE, SPIRITS AND AGRICULTURAL PRODUCTS AND<br>FOODSTUFFS. .... | 62        |
|             | <i>Basic approaches</i> .....  | 62        |
|             | <i>Screening for technical and other constraints</i> .....   | 63        |
|             | <i>Assessment of effectiveness, efficiency and consistency</i> .....   | 63        |

|  |           |
|--|-----------|
| OPTION B.3: CREATE NATIONAL SYSTEMS TO PROTECT GEOGRAPHICAL NAMES AND SUBSEQUENT REDUCTION OF NUMBER OF REGISTERED NAMES .....   | 64        |
| 4.3.4. <i>Basic approaches</i> .....   | 64        |
| 4.3.5. <i>Screening for technical and other constraints</i> .....  | 64        |
| 4.3.6. <i>Assessment of effectiveness, efficiency and consistency</i> .....  | 64        |
| 4.4. OPTION C: CLARIFYING PDO/PGI RULES.....   | 65        |
| 4.4.1. <i>Basic approaches</i> .....   | 65        |
| 4.4.2. <i>Screening for technical and other constraints</i> .....  | 66        |
| 4.4.3. <i>Assessment of effectiveness, efficiency and consistency</i> .....  | 67        |
| 4.5. OPTION D: MANAGEMENT BY AN AGENCY.....  | 67        |
| 4.5.1. <i>Basic approach</i> .....   | 67        |
| 4.5.2. <i>Screening for technical and other constraints</i> .....  | 67        |
| 4.5.3. <i>Assessment of effectiveness, efficiency and consistency</i> .....  | 68        |
| 4.6. OPTION E: ACTION THROUGH A FRAMEWORK DIRECTIVE .....  | 68        |
| 4.6.1. <i>Basic approaches</i> .....   | 68        |
| 4.6.2. <i>Screening for technical and other constraints</i> .....  | 68        |
| 4.6.3. <i>Assessment of effectiveness, efficiency and consistency</i> .....  | 69        |
| 4.7. OPTION F: CO - REGULATION .....   | 69        |
| 4.7.1. <i>Basic approaches</i> .....   | 69        |
| 4.7.2. <i>Screening for technical and other constraints</i> .....  | 69        |
| 4.7.3. <i>Assessment of effectiveness, efficiency and consistency</i> .....  | 70        |
| 4.8. OPTION G: SELF - REGULATION.....  | 70        |
| 4.8.1. <i>Basic approaches</i> .....   | 70        |
| 4.8.2. <i>Screening for technical and other constraints</i> .....  | 71        |
| 4.8.3. <i>Assessment of effectiveness, efficiency and consistency</i> .....  | 71        |
| 4.9. OPTION H: NO ACTION AT COMMUNITY LEVEL .....  | 71        |
| 4.9.1. <i>Basic approaches</i> .....   | 71        |
| 4.9.2. <i>Assessment of effectiveness, efficiency and consistency</i> .....  | 72        |
| 4.10. OPTION I: PROTECTION THROUGH INTERNATIONAL RULES: LISBON AGREEMENT .....   | 73        |
| 4.10.1. <i>Basic approaches</i> .....  | 73        |
| 4.10.2. <i>Screening for technical and other constraints</i> .....   | 73        |
| 4.10.3. <i>Assessment of effectiveness, efficiency and consistency</i> .....   | 74        |
| 4.11. FINE-TUNED SHORTLIST FOR FURTHER ANALYSIS .....  | 75        |
| <b>B.5. IMPACT OF OPTIONS .....</b>  | <b>76</b> |
| 5.1. OPTION A: ABOLISH PDO/PGI AT EU LEVEL AND DEVELOPMENT OF COMMUNITY TRADEMARK SYSTEM (EXISTING COMMUNITY COLLECTIVE TRADEMARK AND POSSIBLE NEW COMMUNITY CERTIFICATION MARK) ..... | 76        |
| 5.2. OPTION B: SIMPLIFICATION OF PRESENT LEGISLATION AND STREAMLINING OF PROCEDURES.....   | 81        |
| 5.3. OPTION B1: MERGING OF THE 2 DEFINITIONS FOR GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OR ORIGIN .....   | 82        |
| 5.4. OPTION B2. CREATION OF A SINGLE REGISTER FOR WINES-SPIRITS-AGRICULTURAL GEOGRAPHICAL INDICATIONS AND POSSIBLY ADOPTION OF A SINGLE LEGISLATIVE ACT. ....                          | 83        |
| 5.5. OPTION B3 SIMPLIFICATION INCLUDING STREAMLINING EXISTING PROCEDURES AND INTRODUCTION OF NATIONAL SYSTEMS .....  | 85        |
| 5.6. OPTION C: CLARIFYING PDO/PGI RULES.....   | 88        |
| <b>B.6. COMPARING THE OPTIONS .....</b>  | <b>90</b> |
| <b>B.7. MONITORING AND EVALUATION.....</b>   | <b>97</b> |

## Introduction

The "geographical indication" is a type of intellectual property right that may apply to all kinds of goods.

Like trademarks and commercial names, geographical indications are distinctive signs which permit the identification of product on the market. The term "geographical indication" is found in international treaty law and is used in the context of regulatory regimes with rather varied characteristics<sup>1</sup>. The substance of the concept is that a geographical indication (GI) is used to demonstrate a link between the geographical origin of the product to which it is applied and a given quality, reputation or other characteristic that the product derives from that origin. GIs identify a good as originating in the territory of a particular country, or region or locality in that country, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

### 1.1. The legal framework: Community protection of geographical indications

Community legislation provides for *sui generis*<sup>2</sup> of protection geographical indications in respect of:

- **Wines:** commenced in the 1970s as part of the common market organisation (CMO) of wine. Member States notified geographical indications to the Commission. As part of the 2008 reform of the wine CMO<sup>3</sup>, the system was amended to adopt the principles of the regulation on agricultural products and foodstuffs (see below).
- **Spirits:** an EU system was also created in 2008<sup>4</sup> following reform of the rules on definition, description, presentation, labelling and protection of geographical indications of spirit drinks. Prior to this, names were listed and protected in the spirit drinks legislation.
- **Agricultural products and foodstuffs:** a harmonised regulatory framework for GI registration in the EU was created in 1992<sup>5</sup>. Notwithstanding some challenges (cases in the ECJ and a 2003-2005 WTO Panel<sup>6</sup>) the aim of the regulation has remained the same. The system has been modified three times (in addition to adjustments in Accession Treaties): in 1997 and 2003 to introduce certain adjustments, and in 2006 when the legislation was

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<sup>1</sup> The terms are used in various international instruments and also in domestic legislation of a number of countries, with varying definitions and legal effects. For an account of international instruments, see WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Eighth session, Document SCT/6/3 Rev on Geographical Indications: historical background, Nature of Rights, Existing systems for Protection and Obtaining Protection in other countries, prepared by the Secretariat.

<sup>2</sup> *Sui generis* is a Latin expression, literally meaning of its own kind/genus or unique in its characteristics. In law, particularly with respect to intellectual property rights, it is a term used to identify a legal classification that exists independently of other categorisations because of its uniqueness or because of the specific creation of an entitlement or obligation.

<sup>3</sup> Regulation (EC) No 479/2008 of the Council on the common organisation of wine (OJ L 148, 6.6.2008, p. 1).

<sup>4</sup> Regulation (EC) No 110/2008 of the European Parliament and the Council on spirit drinks (OJ L 39, 13.2.2008, p. 16).

<sup>5</sup> Regulation (EEC) No 2081/92 of the Council on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, 24.7.1992, p. 1).

<sup>6</sup> EC – trademarks and geographical indications (DS174, 290).

recast to introduce legislative clarifications pursuant to the WTO panel ruling and to simplify procedures, clarify the role of Member States and encourage the use of the EC symbols.

The EU has not implemented any system for the protection of geographical indications handicrafts or other processed products.

## 1.2. Policy context

In the declaration<sup>7</sup> of the Commission issued on 20.3.2006 in the context of the adoption of Council Regulation (EC) No 510/2006 on geographical indications<sup>8</sup>, the Commission engaged to undertake a policy review of the operation of the regulation and its future development. According to the declaration, the review should cover all aspects of the policy that Member States, the Commission and stakeholders may wish to raise. Based on issues raised by Member States during the discussion of the regulation, the following items were identified in the declaration:

- Use of alternative instruments such as trademarks (e.g. collective or certification trademarks) to protect geographical indications.
- Scope of products covered by the Regulation with particular consideration to salt, mixed herbs, wicker products and condiments.
- Identification of the origin of raw materials in a PGI.
- Criteria used to assess the generic status of a name.
- Identification of PDO and PGI when labelled as ingredients in processed products.
- Review of the Community symbol.

Work on the policy review was commenced in 2007 and discussions held in particular in the Standing Committee on geographical indications and designation of origin and in the Advisory Group on quality. However, with the decision to launch a wider initiative on the development of agricultural product quality policy the separate work on geographical

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<sup>7</sup> Addendum to the Draft Minutes – 2720<sup>th</sup> meeting of the Council of the European Union (Agriculture and Fisheries) held in Brussels on 20 March 2008 (7702/06 ADD 1).

<sup>8</sup> Modification of the Regulation on geographical indications (Regulation (EEC) No 2081/92) was necessitated by the findings of a 2005 WTO panel (DS174 & DS290: *European Communities — Protection of trademark and designations of origin and geographical indications for agricultural products and foodstuffs*). The Community welcomed the Panel ruling in particular as it upheld the Community's right to provide for the coexistence of geographical indications with conflicting but prior trademarks. See: 'A 2005 WTO Panel upholds EU system of protection of "Geographical Indications"', IP/05/298, 15.3.2005, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/298&format=%20PDF&aged=1&language=EN&guiLanguage=en>. The Community agreed to a reasonable period of time for implementing the results of panel concerning certain procedural changes of 11½ months expiring on 3.4.2006; the Regulation was adopted and entered into force on 30.3.2006. See also Evans and Blakeney, 'The Protection of Geographical Indications After Doha: Quo Vadis?', *Journal of International Economic Law* 9(3), 2006: <http://jiel.oxfordjournals.org/cgi/content/full/9/3/575>.

indications was halted. The *Green Paper on agricultural product quality*<sup>9</sup> contains a full section on the future of the geographical indications instrument and invited stakeholder comments between 15.10.2008 and 31.12.2008.

Nevertheless, economic urgency expressed by operators and Member States, motivated the Commission to deal with two of the subjects in 2008:

- The inclusion in the scope of the regulation on geographical indications and foodstuffs of 2 more products: salt and cotton<sup>10</sup>.
- The modification of the Community symbol for a protected designation of origin by changing the colour from blue and yellow to red and yellow<sup>11</sup>; this modification permits a further differentiation in the labelling between protected designations of origin and protected geographical indications.

## **B.2. PROBLEM DEFINITION**

### **2.1. Problem identification**

#### *2.1.1. Objectives of present legislation*

According to the preambles of the regulations covering the protection of geographical indications (Regulations (EC) No 510/2006 for agricultural products and foodstuffs, (EC) No 479/2008 for wine and (EC) No 110/2008 for spirits), the geographical indications schemes have the following objectives:

- Contributing to the diversification of agricultural production by:
  - Promoting products with certain characteristics.
  - Supporting rural economies.
  - Improving incomes of farmers.
  - Retaining rural populations.
- Ensuring fair competition between producers of products bearing indications of geographical origin by establishing a system of protection on an EU-wide basis.
- Enhancing the credibility of products having certain characteristics sought by consumers.

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<sup>9</sup> Green Paper on agricultural product quality: product standards, farming requirements and quality schemes, Brussels, 15.10.2008, COM(2008) 641 final, [http://ec.europa.eu/agriculture/quality/policy/index\\_en.htm](http://ec.europa.eu/agriculture/quality/policy/index_en.htm)

<sup>10</sup> Commission Regulation (EC) No 417/2008 of 8 May 2008 amending Annexes I and II to Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 125, 9.5.2008, p. 27–27).

<sup>11</sup> Commission Regulation (EC) No 628/2008 of 2 July 2008 amending Regulation (EC) No 1898/2006 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 (OJ L 173 3.7.2008 p. 3).

- Providing clear information regarding the origin of products, so as to assist consumer choice.
- Set clear, harmonised rules for different agricultural product, foodstuff and alcoholic beverage sectors according to common geographical indication principles.
- Give intellectual property rights to users of names of products particularly associated with geographical origin.

In implementation of those objectives, the EC has established a Community register for geographical indications of agricultural product and foodstuffs<sup>12</sup>, divided into two types:

- protected designations of origin (PDOs) and
- protected geographical indications (PGIs).

For all PDOs and PGIs the EC has defined the level of protection to be ensured within the EU. Community rules define an application procedure to be followed at Member State<sup>13</sup> level and at EU level, including an objection procedure enabling parties to submit objections to a proposed registration. Member States are responsible for protecting PDO and PGI rights on their territories. Finally, Community symbols for PDOs and for PGI have been created which may be used in marketing any product made in conformity with the specification of a registered PDO or PGI.

### 2.1.2. *Problems raised*

#### 2.1.2.1. Rural development and problems raised justifying initial scheme for protecting geographical indications of agricultural products and foodstuffs

Alongside the completion of the internal market in the 1980s, policy makers were aware of numerous sales names, labels, designations of origin, etc. present in the market making choices difficult for the consumer. These products were manufactured in accordance with different national laws, under conditions and with quality characteristics that were not comparable. These problems were highlighted by consumers in 1988 in Brussels<sup>14</sup>. National practices on labelling and origin legislation were varied and ‘approval and mutual recognition’ was posing some problems. In addition, following the *White Paper on completion of the internal market in foodstuffs* the Community was preparing an EC Trademark Directive. The necessity to carry out harmonisation of definitions and to ensure harmonised protection for designations of origin was signalled by some Member States.

The objectives of Member States arguing for a designation of origin instrument were in line with the new direction of agricultural policy and the desire to address the problems of rural society (see *Green Paper on future of Community agriculture*<sup>15</sup>). The original aim was to encourage the production of high quality products, taking into consideration that those products were often produced in mountain areas and less-favoured areas (see text box below).

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<sup>12</sup> Registers for Wine PDOs and PGIs, and for Spirit Drink PGIs are in the process of being set up.

<sup>13</sup> Where a registration application concerns a geographical area situated in a third country, it must be sent to the Commission, either directly or via the authorities of the third country concerned.

<sup>14</sup> Conclusions of EBCH Council held in Brussels on 16.5.1988.

<sup>15</sup> COM(85) 333 final - Perspectives for the Common Agricultural Policy, V-Bulletin EC 7/8-1985.

This aim complemented measures designed to find alternatives to standard agricultural production (such as cereals) that was increasingly uncompetitive in these zones.

**Box 1: Suggestions for the future**

**Extract from 'The future of rural areas'** Commission Communication transmitted to the Council and the European Parliament on 28 July 1988 (COM (88) 501 final)<sup>16</sup>.

*Policy on product quality: rural society holds a strong card*

Because of stagnating demand and the need to bring surpluses under control the future of rural production can no longer be seen in quantitative terms, but this does not rule out increases for certain products in deficit. The continued production and the promotion of high-quality products could become of substantial importance in particular to less-favoured and remote areas. Most distributors report that consumer demand for non-factory and regional products is increasing steadily.

The determination to protect agricultural and food products of identifiable geographical origin, their mode of production and their special qualities has led to the appearance of controlled origin designations or labels in the Member States. This movement has been piecemeal but has in general pleased both producers, who obtain higher prices in return for a concentration on quality, and consumers, who can buy high-quality products of guaranteed production method and origin.

Commission intends to promote a Community policy on product quality. It clearly indicated this option in 1985 in its Green Paper on a future for Community agriculture (COM(85) 333 final) and in its communication on completion of the internal market in foodstuffs (COM(85) 603 final). National practices on labelling and origin designations vary at present and a Community approach is required. Approval and mutual recognition procedures should be set that would prevent misuse and the pointless proliferation of labels of no precise signification.

Such a policy must not, however, lead to practices that could jeopardise the elimination of barriers to trade or to national legislation incompatible with completion of the internal market by 1992. Labels and origin designations must serve to highlight the special characteristics of certain products and protect them against unfair practices and imitations. But under no circumstances may they be used as an obstacle to the free movement of any product not bearing incorrect or misleading markings. Nor may their use hinder competition or innovation where the consumer is fully informed of these.

On this basis the Commission will shortly be suggesting a general framework for the use of labels permitting recognition of products:

- (i) subject to a special production quality requirement (cheese, butter, prepared cut meats, durum wheat pasta, etc.);
- (ii) originating in areas known for their traditional production (poultry, drinks, meat of particular breeds); a label such as 'European upland product' could be used to promote the extensive production methods still predominant in these areas;
- (iii) produced by special methods: free range, organic, etc.

In 1979 the Council adopted a Directive on labeling (OJ L 158 26.6.1979) introducing provisions designed to prevent purchasers of food products from being misled. Its text, general in nature, will shortly be amplified to prohibit any use of national names and descriptions incompatible with completion of the internal market by 1992, in order to guarantee free movement of products not marked with incorrect or misleading information. Statements describing modes of production and manufacture, origin or source will also be defined, e.g. free range, non-industrial, traditional, from animals fed in the traditional way, upland product, etc.

The same approach ought to be followed for the granting of controlled origin designations. While labels are, legally speaking, trademarks that may be used in more than one sector, origin designations involve more detailed legislative provision, the product description being available only to producers in a specific zone. The approval procedures for recognition at Community level ought to permit establishment of a clear link between product quality and geographical origin (soil, herbage cover, vine variety, know-how, etc.).

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<sup>16</sup> Bulletin of the European Communities Supplement 4/88, p. 45.

It is only for wine that specific rules protecting geographical indications have so far been enacted. A proposal on the names of spirits and aromatised wines is also on the table. General quality-linked protection of geographical indications, also covering origin designations, is needed for other food products.

A quality policy involving geographical indications ought to be integrated into a more general Community framework and to take account of policy followed on industrial and commercial ownership (trademark law).

A comprehensive approach not restricted to products originating in the countryside would also have the advantage of more easily permitting both the introduction of a Community policy to replace the bilateral agreements used so far between Members States and international defence of a uniform policy.

In sum, the problem of rural areas was identified as primarily in those agricultural zones where commodity farming was no longer viable and alternatives had to be found, including diversifying out of agriculture. The White Paper noted that these areas however held strengths in terms of regional, 'natural' and speciality product especially that associated with origin and environmental landscape. The problem of the viability of agriculture in rural areas was only to be partly addressed by quality schemes, including geographical indications system, among others to help producers in these areas become more viable by being able to advertise and market product with characteristics and/or farming attributes that they could produce having a competitive advantage (designated origin or landscape type not applicable in more productive zones) and for which there was a consumer demand.

The main policy to emerge from the White Paper was that of rural development, subsequently forming the "second pillar" of the Common Agricultural Policy (CAP).

The trend, fostered by the EC legislation, has been one of increasing the quality of products within the framework of the common agricultural policy, thereby promoting their reputation. The means used for this purpose include designations of origin. That tendency was borne out by the second to sixth recitals in the preamble to Regulation (EEC) No 2081/92. The legal basis for that regulation, is logically, Art. 37 EC, which is in the agriculture chapter of the Treaty. The legislature is thereby concerned not only with protecting the quality of agricultural products but, as is shown by the second recital in the preamble to the regulation, also with matters of structural policy. The promotion of rural areas is sought by improving farmers' income and retaining the rural population in those areas.

Rural development policy introduced in 2005 specific measures to support national and European quality schemes, including PDO and PGI. The aim of the measures is to support participation in quality schemes as well as to support information and promotion activities<sup>17</sup>.

Guidelines for rural development policy in the period 2007 to 2013 aim to address a strategic approach to competitiveness, job creation and innovation in rural areas and improved governance in the delivery of programmes. Under one of the axis of the rural development programmes, "improving the competitiveness of the agricultural and forestry sector", a range of measures will target human and physical capital in the agriculture, food and forestry sectors (promoting knowledge transfer and innovation) and quality production.

The **Evaluation of PDO/PGI regulation**<sup>18</sup> has addressed the issue of development of rural areas through the study of 2 indicators<sup>19</sup>:

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<sup>17</sup> Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1).



- a) the increased diversity of products through the number of products preserved, the number of products introduced and the innovation in the industry;
- b) the rural area population retained.

The analysis of the evidence shows a mixed picture. On the one hand, it seems quite clear that the protection afforded by the scheme has served to protect vulnerable and aspiring product names, serving to generally successfully preserve the diversity in PDO/PGI products that are currently produced<sup>20</sup>. One minor trade-off of this protection has been the fact that, as a specification is required in order to have a protection system, on registration of the product name, this requires some 'squeezing-in' of previously diverse product varieties produced in the region into one single PDO/PGI product. Obviously, producers who join the scheme feel that the benefit of the protection afforded to the name outweighs the cost of reduced product varieties.

The case studies show that the scheme has been effective in helping to preserve a number of products which would otherwise have been in danger. These products originate from several different parts of Europe including the North, South and new Member States.

According to the interviewed producers in the case studies, the scheme has had little overall impact on diversification for producers. Diversification for producers was promoted in only a limited number of cases when they were able to introduce new products as a result of a higher reputation achieved by the scheme. On the other hand, in some cases PDO/PGI producers have reduced their product range to comply with the PDO/PGI specifications.

Similarly, the effect of the scheme on innovation is rather limited. This is not surprising, considering that at the heart of the scheme is a specification of the traditional methods, ingredients and output qualities that must be employed in order for the produce to qualify for protection and the use of the protected name. Thus, the protecting mechanism becomes somewhat of a restraint on innovation in the production process.

However, one useful innovation permitted by the scheme has been the increased access of producers of protected product names to new marketing and distribution channels, as supported by the analysis of the responses of our surveys. This is an important diversification that will allow the existing, preserved protected product names more opportunities to sell their quality assured, geographically-linked and certified authentic produce to new customers, meaning the prospect of increased demand and sales.

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<sup>18</sup> Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

<sup>19</sup> For each of these indicators, information on the impact of the scheme was provided by 108 producers PDO/PGI (farmers and processors) and 17 producers' groups' who were interviewed as part of the case studies. It should be noted that the evidence is qualitative and limited to a number of cases and may not necessarily be representative of the entire population.

<sup>20</sup> The case studies have shown a few examples where, according to participants, the scheme has helped prevent some products from disappearing. It is interesting to note that, in most of these cases, the PDO/PGI products are produced at a small scale, using traditional production methods, in remote areas or supply niche markets.

The other indicator on the effectiveness of the scheme in terms of achieving its objectives is the extent to which it has succeeded in increasing or retaining economic activities in rural areas. There are a number of ways in which the PDO/PGI scheme can contribute to higher economic value and promote economic development at local and regional level<sup>21</sup>. In annex I a summarised review of literature on the issue, conducted under the Evaluation of the CAP policy on PDO/PGI is presented.

The case studies<sup>22</sup> undertaken as part of the PDO/PGI Evaluation provide qualitative evidence of improvement in conditions for development, benefit to the regional economy and employment growth based on the perception of respondents or experts. As a matter of fact, only one producers' group (Spreewälder Gurken) was able to provide statistics on production and employment. The analysis presented some methodological limits: firstly, data is limited for this task, as the analysis of the impact is specific to the area of production, whose geographical limits are defined with reference to the regional characteristics and production techniques of the product, rather than the standardised nomenclatures of regions (e.g. NUTS) used to produce regional statistics, such as population and structural business statistics.

Secondly, the expected impacts of improved development of rural economies and less favoured areas are both intermediate and global impacts, so the impact of the scheme in terms of achieving these impacts may not yet be fully felt in areas where PDO/PGI registration is more recent. Thirdly, where data is available, it is not possible in most cases to distinguish the impact in the data, or in the experience of the respondents, of the PDO/PGI registration from that of other factors.

This being said, in general, the evaluation of the impact of the PDO/PGI scheme on business conditions is judged to be positive by study participants, with many respondents noting a strong improvement. The reasons cited for the improved business conditions are wide and varied (higher prices, reduced name abuse, enhanced reputation and marketability, improved international trade conditions, increased consumer awareness, stable relationships, market access and new opportunities) but all of which are strongly linked to the PDO/PGI scheme and so may be deemed relevant than other factors.

At the same time, however, some other respondents reported that did not experience any significant impact on their activities. But, no PDO/PGI producer reported a negative impact.

The scheme also had a stronger positive impact on producers than retailers, which is likely to be explained by the fact that retailers sell a wide range of products besides PDO/PGI products.

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<sup>21</sup> Positive impacts include: larger sales volumes, higher prices and higher profits achieved by producers of PDO and PGI products as well as direct spending effects from the higher level economic activity of PDO/PGI producers. This includes the additional employment, or the employment which was safeguarded, by the PDO/PGI producers and the direct additional spending in the local communities and the region by the PDO/PGI producers and their employees. Other possible types of spill-overs such as technological and marketing spill-overs whereby other producers of non-PDO/PGI producers may learn from the experience and success of the PDO/PGI producers and adopt some of the practices of the PDO/PGI producers; Another type of spill-over concerns the general adoption of specific quality standards by non PDO/PGI producers in imitation of the PDO/PGI producers.

<sup>22</sup> The information from the case studies is based on the results from interviews to 108 stakeholders in the PDO/PGI supply chain and 17 producers' groups using the questionnaires to producers and producers' groups.

On retention of rural populations, due to data limitations, it is not possible to make a judgement on the basis of the evidence available. Where data has been available, there has been an increase in population but, as population change is determined by many factors, it is not possible to judge how much (if any) of this change is attributable to the scheme.

Evidence of the PDO/PGI scheme benefiting the regional economy is weak and limited to anecdotal evidence, with many respondents expressing difficulty in providing any quantitative impact. The evidence suggests a positive impact in the case of Toscano and Jersey Royal potatoes. In some other cases, the scheme has had no impact on the regional economy.

When the PDO/PGI scheme has had an effect, it is mostly an indirect one based on spillovers from the increased production in the area.

Finally, regarding employment in the region, the effect of the PDO/PGI scheme has been low, with a measurable impact on employment only in two cases among the 18 PDO/PGI products covered by the case studies. In Tuscany, the PDO/PGI scheme is judged to have preserved jobs among olive producers, whereas in the case of Spreewälder Gurken employment increased by 22% since registration of the name.

This can bring us to the conclusion that even if the PDO-PGI instruments are not in and of themselves vehicles for funding, if they work effectively, they should:

- contribute to the achievement of aims of rural development funding with which they are associated, and
- assist farmers to develop economic viability of their businesses in so far as the production activities depend on the marketing of products identified as PDO and PGI.

Nevertheless, methodological complexity does not permit to a full picture of the overall results on diversification and rural economy. In this context, further research through a Meta study may be considered, to fully address the issue for the overall PDO/PGI schemes.

#### 2.1.2.2. Visibility of the EU scheme:

With regard to information theory, an asymmetry of information between producers and consumers gives raise to market failure. While the producer knows the products properties, consumers do not have always easy access to this information. Asymmetrical information places the consumer in a position of weakness so that he cannot always optimise his choices (OECD, 2000). In addition, equilibrium in the market is achieved at lower levels of quality (Rangnekar 2003). The solution is to enable the consumer to obtain more information.

The EC created a Community symbol in order to facilitate information and increase knowledge of the PDO/PGI system. Nevertheless, a recent market survey indicates that only 8% of European consumers are able to distinguish and recognise the Community symbols (PDO/PGI Evaluation<sup>23</sup>).

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<sup>23</sup> Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and

A research conducted in UK in 2007, to around 1000 shoppers showed that recognition of PDO/PGI symbols is low. Only 7% of shoppers were aware about the PDO/PGI and TSG symbols. In addition changes in awareness from 2002 to 2007 have been insignificant<sup>24</sup>.

One of the reasons to explain the low awareness of the European symbols which results in low visibility of the scheme could be the diverse understanding of the scheme's purposes, mainly among national authorities and operators, including producers. Although the EU scheme on GIs is aimed at protecting names designating products with specific quality features or reputation due to the geographical environment, there is a tendency to use it to protect high quality products or products merely coming from the area.

Geographical indications are also affected by the "excess of labels" phenomenon (see impacts assessment D). There might be confusion for consumers between the GI scheme and other schemes like traditional speciality guaranteed (also managed at EU level), national or regional origin labels or other quality labels conveying the concept of specific quality. There is also confusion with reserved terms (like "classico" and "curado").

European Economic and Social Committee (EESC) noted in an opinion issued in 2008<sup>25</sup> that the recognition of "European certification schemes and their logos and labels is still inadequate and very patchy".

During the evaluation, some producers have expressed concerns about the small interest that retailers show in the scheme, which has certainly a direct impact on the visibility of the scheme in the market. This could be partially explained because the information on control of compliance with the specifications does not reach retailers.

A research<sup>26</sup> was carried out in UK in 2003, among grocery retailers, to understand awareness and perception of the EU schemes on PDO, PGI and STG. Findings show that retailers are aware about the schemes. They found interesting the fact that the scheme had a logo that could be used to make products easily identifiable. But they also had concerns in respect to:

- Lack of knowledge of the scheme amongst consumers, suppliers and producers.
- Lack of knowledge and confusion between PDO, PGI and traditional speciality guaranteed (TSG).
- Low general profile of the schemes
- Low prominence of logo on packaging
- Limited choice.

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Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

<sup>24</sup> Food from Britain market research report on Consumers' Awareness of and Attitudes to Protected Food Names, April 2007.

<sup>25</sup> Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

<sup>26</sup> DEFRA market Research report on Protected Food Names Scheme, made by ADAS, July 2003, available at: <http://www.defra.gov.uk/foodrin/foodname/research/pdf/adasresearchpdo.pdf>

DOLPHINS project made the following recommendations for the communication of PDO/PGI schemes. Though the effectiveness of the 1995 promotional campaigns have not been evaluated, the low consumer awareness of the designations recorded in many subsequent studies suggests that the campaigns were not very successful. According to the study, the EU faces two main problems: first, the lack of consumer confidence and trust in the EU as a message source, and second, the problems of generic campaigns lacking specificity and meaning. To address these problems, it is suggested linking future campaigns to on-going national or regional events (for example, exhibitions, markets, shows), and to use specific products in communications literature to illustrate and exemplify what the designations mean and how they are beneficial. In doing this, better relationships and coordination should be developed with the national and regional agencies responsible for supporting and certifying protected GIs, so that different assurance schemes can work in harmony rather than competition. Greater account should be taken of the acceptance and relevance of the designations to EU consumers, as to date, the designations have been producer-driven. It would be beneficial for communications to be tailored to specific consumer segments, rather than ‘all consumers’. Where possible, the independence and rigor of the certification system should be emphasised<sup>27</sup>.

Stakeholders have expressed in the Green Paper consultation strong needs to increase and reinforce communication policy on the PDO/PGI scheme. Communication should target both third countries and internal market to inform the consumer on the scheme and to make the European symbols better known.

In third country markets, it could be an interesting tool to increase awareness on the protected names and would facilitate consumers to avoid misuses.

**Extent of the problem:** The knowledge of the consumers and producers on the registration system, on the purposes of the scheme as well as visibility and valorisation of the system in the market (through the Community symbols) appears to have been low.

#### 2.1.2.3. Economic problems

If data and studies on the economic aspects of EU geographical indications are numerous, there is a lack of empirical, systematic and methodological comparable researches. Different economic disciplines have been demonstrated to be useful in analysing the supply chain. However, understanding the complex system of agri-food chains requires more investments in retrieving empirical data for testing propositions and developing appropriate models. The results of case studies should always be taken with precautions. Some of them (like the studies conducted under the **JRC projects on quality certification schemes**) have analysed supply chains of 4 PDO and provide interesting evidence of price formation and added value distribution in the chain. Among economic problems related to geographical indications, the long-term survival of farms and their market are fundamental to reach the objective of the policy.

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<sup>27</sup> Concerted Action DOLPHINS “Development of Origin Labelled Products: Humanity, Innovation and Sustainability”. WP 4 “Link between Origin Labelled Products and consumers and citizens” - Final Report July 2002.

Evidence from study (Baena, JRC study 2006<sup>28</sup>) shows that for an olive oil the price perceived by farmers for olives is the same for a PDO marketed product as for a non PDO marketed extra virgin olive oil. At the processing stage, price difference for the PDO is 10% to 30% and at retail up to 22%. Concerning margins, the same study shows that a margin of 44% is generated at processing and only 0.5% margin at retail. According to retailers, the PDO product works like a hook function since it increases the attractiveness of the marketplace. Pressure towards low margins affects also other supply chain stages.

A study on the chain supply of Comté<sup>29</sup> (JRC study) shows that in the region of Jura the price of milk perceived by the milk producer of Comté cheese is higher (0.37 €/l) than the price received for milk for a non PDO cheese (0.33 €/l), thus 12% increase.

This study also shows that in spite of a higher milk price, PDO farms obtain economic results similar to non-PDO farms. This suggests that profitability of PDO milk is not higher than of non-PDO milk. Nevertheless, the study qualifies this assumption: non-PDO farms of this sample draw a greater proportion of their income from crop products. The similar profitability of the two types of holding in fact probably reflects non-PDO farms having a lower profitability in dairy production, but stronger in crop production, particularly cereals. The choice to allocate less area to crops in PDO farms is probably explained by differences in soil quality, with PDO farms being located in zones that are less favourable for cereal crops. As a matter of fact, the Comté PDO area is located mainly in mountainous areas, but has a small part in plain with easier production conditions.

Evidence from a study<sup>30</sup> shows that Parmigiano-Reggiano (45 €/100kg cheese, 2001) and Grana Padano (40 €/100kg cheese, 2001) milk producers get higher prices for the milk than non PDO producers. Nevertheless, concerning profit on sales, milk producers get the lower profit rate (even negative) if compared with processors, traders and wholesalers and retailers. The latter get the most important profits from 23% for Parmigiano-Reggiano to 27 % for Grana Padano (see annex IV).

The 4<sup>th</sup> case study on "Dehesa de Extremadure" (Ham) shows a different tendency as producers get 29% higher prices for the raw material for PDO than for non PDO. To a lesser extent, industries and distributors also perceive a difference on prices, as prices for PDO hams are 21% higher than for non PDO hams. Surprisingly, those receiving less price difference are retailers who only gain a 6% price premium, the reason being probably that consumers are in general more concerned with other "Iberian ham" than with "PDO" ham. 'Iberian ham' is a name that adds value to the product in consumers' eyes whereas PDO is not yet widely known by consumers as adding such quality features.

That study shows that prices difference between PDO and non-PDO product at farm gate is being assumed by industries that are relying on PDO development. However, this situation does not seem to be sustainable if messages on price are not transmitted in the medium term to consumers – who must also be persuaded to pay the price difference. It is therefore necessary that consumers become aware of different features (linked to stricter requirements) offered by the PDO which are not currently sufficiently promoted.

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<sup>28</sup> [http://ec.europa.eu/agriculture/quality/certification/docs/case1\\_en.pdf](http://ec.europa.eu/agriculture/quality/certification/docs/case1_en.pdf)

<sup>29</sup> Case study conducted by DG JRC/IPTS in 2006 on Comté:

[http://ec.europa.eu/agriculture/quality/certification/docs/case3\\_en.pdf](http://ec.europa.eu/agriculture/quality/certification/docs/case3_en.pdf)

<sup>30</sup> [http://ec.europa.eu/agriculture/quality/certification/docs/case8\\_en.pdf](http://ec.europa.eu/agriculture/quality/certification/docs/case8_en.pdf)

With the exception of the last study mentioned, evidence from a number of studies shows that even if the farmer gets higher prices for a PDO product, he does not get a return of added value equivalent to the rest of the stakeholders of the supply chain.

Distribution of added value among operators is linked to the collective organisation management<sup>31</sup>. The geographical origin calls for new local coordination and is conditioned by social forces that can have varying impacts on the way activities are pursued, for example on the composition of the producer association or consortium and on the vertical alliances which could involve contracts that formalise supplier-client relations and influence the rules of distribution of benefits among operators.

**Trade, Intellectual property rights and sustainable development (IPDEV) project**, financed within the Sixth EU Framework Programme for Research and Technological development<sup>32</sup> concludes that there is evidence from many cases that GI protection can help producers to reach their economic objectives, and that it contributes positively to regional economic development. Then again, the potential economic impacts of GIs must be nuanced according to the degree of consolidation achieved by the GI in relation to the total production of the local good and vis-à-vis competing economic activities. The commitment of economic actors involved in the supply chain towards the achievement of common goal (i.e. to produce and sell a strictly defined product) is essential for GI success, as mere institutionalisation of GIs is not sufficient. In this sense, attention should be brought to the fact it has been seen that actors, in different stages of the supply chain, depend on incentives which may increase proportionally to their capacity of “capturing” the benefits generated by the GIs.

Two elements have been found to favour the increase in the capture of rents: the first element is higher levels of integration. Strategies which have envisaged integration forward have provided producers (particularly in short supply-chains, for ex. artisan or *fermier* cheese producers) with access to the benefits of the entire value-added (the last sale) of the product.

A second element is related to the coordination of the supply chain. Higher degrees of coordination among actors are accompanied by beneficial outcomes such as lower transaction costs and higher synergetic interaction. Coordination is normally ensured by the presence of intermediate institutions, such as producer associations or GI management institutions where producers, as well as other stakeholders participate (*Consejos Reguladores*). The presence – and strength – of such institutions, from the evidence found, seems to favour stability of arrangements among actors (for example, the payment of fixed price premiums to farmers by associated processors/distributors, as in the Schwäbisch-Hällisches Qualitätsschweinefleisch case) and ensure better rent distribution among actors.

Evidence from the "**Evaluation of the CAP policy on PDO and PGI**" shows that the distribution of profits and revenues over the members of the supply chain differs according to the product in question, and as such a firm conclusion on the effect of the scheme in terms of ensuring that farmers of PDO/PGI products benefit more than in the case of comparable non-PDO/PGI products is difficult to formulate.

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<sup>31</sup> Barjolle, Révion and Sylvander, “Creation and distribution of value in PDO cheese supply chain”, *Economies et Sociétés*, n°29, 9/2007.

<sup>32</sup> <http://www.ecologic.de/modules.php?name=News&file=article&sid=1357>

The assessment done during the evaluation is based on a small number of case studies for which there was limited available data, supported by qualitative evidence provided by the participants in some case studies (limited to two case studies per country). So, the findings are not necessarily representative of the whole registered GIs in the European Union.

The impact of the PDO/PGI scheme on the distribution of the returns along the supply chain shows a mixed picture across the different products for which information has been obtained. In some cases farmers benefit from the scheme as a result of higher prices paid for PDO/PGI products (in relation to their comparator product identified in the study). Furthermore, in some of these cases the farmers also often get a higher share of the final PDO/PGI price. This means that in such cases farmers are able to secure a share of the returns of increases in sales for these products.

PDO/PGI products typically have higher production costs (see annex VI) than other products, so the fact that farmers receive higher prices does not necessarily correspond to higher profits in itself. However, the qualitative evidence provided during the evaluation shows for some cases (Mela Val di Non, Toscano, and Jamón de Teruel) that farmers are able to earn higher prices and profits as a result of using the PDO/PGI scheme. This can be explained by the following factors:

- Farmers get a higher share of the profit in cases where they are represented by an association or cooperative. In such cases, producers benefit from the actions of the association and services of belonging to the cooperative, yielding benefits such as increased organisation and negotiation powers.
- The high quality of the product sold at the farm gate seems indispensable to secure high profits for farmers. It is the uniqueness of the product that puts farmers in a better bargaining position vis-à-vis purchasers, as farmers certified under the scheme have an exclusive (collective) right to produce the product, giving them some degree of market power.
- Conversely, when farmers sell a product which can indistinguishably be used in the production of a PDO/PGI or non PDO/PGI product (such as, for example, the milk produced by Greek milk farmers and the rice grown by Camargue rice growers), they are not as successful in retaining a high share of the value added of the PDOs/PGIs. In fact the benefit to farmers in such a case is none or very small.

Green Paper stakeholders say:

Define rights of producers in relation to defining the volume of production FR-CNAOC.

Tasks of producer groups should be defined e.g. to manage volume production and use of ingredients. This demand was also expressed in the Advisory Group on Quality held on 25.2.2009.

These diverse economic results match with the perception of the producer groups of PDO/PGI (collected through a survey made directly to PDO/PGI producer groups in 2007): added value for PDO producers is weak (mentioned by producers from Italy) or is "taken" by the producer group (Italy). Some producer groups also complain on the increase of



production cost, especially for control operations (Greece), while others that the added value is not well distributed along the chain (from a producer group in Italy).

### **Main economic results of the Survey 2007<sup>33</sup>**

Producer groups said:

- Following registration in 60% of responses producer groups have underlined an increase in production. Nevertheless, productions' increase has not been entirely translated by an increase of number of producers as only 43% of respondents underline such increase.

Some respondents (1/3) record increases on employment following the registration.

As to sales, impact of registration seems clear, which shows improved identification of the product:

- it allows access to new markets: supermarkets, food specialised retailers and restaurants.
- it permits to extend market access to domestic and international markets. A third of respondents declared clients operate in national and no more in regional markets. Registration results sometimes in new costs, mainly linked to conditions imposed in specifications. Excessive cost of controls is also mentioned by several producer groups from Austria and Italy in the framework of the Survey 2007.

As to sales price,

- 40% of respondents notices an increase in sales prices, higher than inflation, put down by registration. Registration is the recognition of a know-how and an added value, that distinguishes the products from their substitutes and justifies a higher price in the market.
- Increase of sales prices seem to be more important for retailers than for wholesale, probably to the detriment of producers

Global effects on the region of production are more shaded. Nevertheless some respondents underlined positive impacts on revenue, tourism, employment, infrastructure creation and support to rural development. There was no socio-demographic impact, nor impact on landscapes, except for olive oil producers.

**Extent of the problem:** evidence of studies shows that even if the farmer gets higher prices for a PDO/PGI product, he does not get a return of profit/added value equivalent to that obtained by other stakeholders of the supply chain.

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<sup>33</sup> DG AGRI carried out a survey among 600 producer groups of registered GIs in 2007. 143 answers have been received, from 134 PDO/PGI. Majority of respondents (88%) were producer groups answered to the questions, which were mainly on economic aspects of the scheme. Respondents were originating from 13 Member States, although 5 countries did concentrate the highest rate of responses: Italy, Greece, Portugal, Spain and France. Answers concern to 5 categories of products: olive oils, meat products, cheese, fruits and vegetables and meat.

#### 2.1.2.4. Environmental approach to PDO/PGI schemes

EU legislation on geographical indications (under Regulation (EC) No 510/2006) does not mention environment protection among the specific objectives of the legislation.

Nevertheless, EU policies, and notably the Common Agricultural Policy (CAP), are increasingly aimed at heading off the risks of environmental degradation, while encouraging farmers to continue to play a positive role in the maintenance of the countryside and the environment by targeted rural development measures and by contributing to securing farming profitability in the different EU regions.

The agri-environmental strategy of the CAP is largely aimed at enhancing the sustainability of agro-ecosystems. The measures set out to address the integration of environmental concerns into the CAP encompass environmental requirements (cross-compliance) and incentives (e.g., set aside) integrated into the market and income policy, as well as targeted environmental measures that form part of the Rural Development Programmes (e.g., agri-environment schemes).

Recent reform of wine market organisation, which includes a chapter on geographical indications, cites as objective to "create a wine regime that preserves the best traditions of Community wine production, reinforcing the social fabric of many rural areas, and ensuring that all production respects the environment".

As it was underlined in the Green Paper on agricultural product quality "For many products the quality and reputation does not rest exclusively on factors linked to origin and/or the *savoir faire* of local producers. Sustainability criteria can also make an important contribution to the quality of the product and in meeting consumer expectations, such as:

- contribution of the product to the economy of a local area,
- environmental sustainability of farming methods,
- economic viability of the product and potential for export,
- for processed food products, the requirement that all raw materials must also come from an area surrounding the zone of processing of the product<sup>34</sup>.

In this context, the Green Paper addressed the following question to stakeholders:

Should specific sustainability and other criteria be included as part of the specification, whether or not they are intrinsically linked to origin? What would be the benefits and drawbacks?

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<sup>34</sup> Green Paper on agricultural product quality: product standards, farming requirements and quality schemes COM(2008) 648 final.  
[http://ec.europa.eu/agriculture/quality/policy/index\\_en.htm](http://ec.europa.eu/agriculture/quality/policy/index_en.htm)

Stakeholders express the following concerns:

A large majority of respondents from different sectors, with the exception of national authorities and individual consumers/farmers, are opposed to specific sustainability and other criteria.

Some respondents declared themselves in favour, majority were national authorities and consumers, and a minority of respondents from "other sector" which included environmental organisations. Among environmental organisations, EFNCP underlined that far stronger emphasis should be placed on how products are produced at farm level.

An interesting trend is that within the majority of national authorities favourable to those criteria, more than half stated that those criteria should be **voluntary**. This was also suggested by some of those who objected.

Disadvantages would be:

- Risk of confusion with organic farming, as sustainability criteria are essential to that scheme.
- Difficulty to justify in WTO.
- Sustainability is not a priority criteria for quality (conflict between modern ideas of sustainability and traditional production methods), it would be difficult to link it to production area of PGIs (long supply lines).
- Difficulty to monitor compliance and carry out audit.
- Communications on sustainability criteria could be resolved with a quality sign on "low carbon emission"

Advantages would be:

- Better consumer information especially for the consumer who is concerned with the environmental aspects. The degree of variation in the environmental requirements of labels is a potential source of confusion (obviously such detailed information is not displayed on the label itself), especially for the consumer who is concerned with the environmental aspects of the farming system, and who might assume that a product from an apparently more "natural" geographical area is produced with particular respect for the nature of the area (EFNCP response).
- Incentive to adopt best practices; Producer groups could prepare specifications and educate farmers on sustainability criteria
- Reinforce local and regional participation;
- Possibility to manage production volumes;
- Possibility to compensate higher cost by claiming higher prices.

Certain practices under PDO-PGI specifications have positive impacts on the environment. It has been stated that some PDO labels are far more explicit in requiring certain animal feeding systems, addressing areas such as maximum stocking densities, the use of local hay in preference to silage (e.g. “Comté” cheese in France, Bowen 2007), and the free-range use of acorns in the case of “Dehesa de Extremadura” acorn-fed Iberian ham. Thus from the perspective of high nature value farming, some PDO labels have some link to environmentally relevant farming practices<sup>35</sup>.

Even if environmental protection is not a primary motivation in GI protection schemes, some studies have shown interesting results. Research has been carried out in milk production system of Comté (French PDO) and showed that industry is much less intensive than the industrial milk production model employed throughout much of France. The diversity of aromatic properties and flavours in Comté cheese is highly valued by producers and consumers alike. Actors in the Comté supply chain believe that factors such as climate, altitude, and native species of grasses—which are incorporated into the pasture-based diet of the cows— influence the properties of the milk, and the taste and organoleptic properties of the cheese.

IPDEV project has assessed the applicability of geographical indications as a means to improve environmental quality in affected ecosystems and the competitiveness of agricultural products<sup>36</sup>. Even though environmental quality has been a secondary motivation in GI related strategies, there is some evidence in this study to suggest that GI policy makes possible the protection of some products that could be produced in environmentally sustainable farming systems. The case studies run within the IPDEV project were selected when links between GIs and environmental quality could be plausibly made i.e. when products displayed visible or evident links to protected natural areas and areas of high value farmland.-According to the findings of this study, the products protected by these GI show positive results in reference to conservation and maintenance of biodiversity and distinctive cultural landscapes, and the regions of origin often include protected areas (see table in annex III). In this sense, GIs may appear in certain cases as an important complement, to integration strategies for biodiversity-rich farmland areas (such as semi-natural grasslands, areas important for migratory birds and dehesas) in particular to avoid land abandonment in marginal regions.

On the other hand, there are also examples of GIs where production methods are not at all different from standard agricultural practices, with associated environmental impacts. In particular, processes of intensification - with visible environmental impacts - are present and possible under GI specification rules.

Following EFNCP (European Forum on Nature Conservation and Pastoralism) response to the Green Paper, some PDO areas may coincide with a high incidence of high nature value farming, but others may equally well be under predominantly more intensive farming . In order to be competitive, farms will tend to intensify as far as PDO-PGI requirements allow. Sometimes the resulting farming system is still high nature value, and sometimes not. In some

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<sup>35</sup> EFNCP response to Green Paper on agricultural product quality.

<sup>36</sup> Trade, Intellectual property and sustainable development (IPDEV) is financed within the Sixth EU Framework Programme for Research and Technological Development (FP6).  
<http://www.ecologic.de/modules.php?name=News&file=article&sid=1357>

cases, farming systems and nature values may vary considerably within a PDO production area. An example is the Camembert de Normandie PDO: much of the cheese carrying the label is from quite intensive farming systems and landscapes which have lost their nature value. Yet the image of the label and of the product is associated with a more traditional, low-intensity and generally HNV farming system which has survived in one specific area of Normandy – the Pays d’Auge.<sup>37</sup> In this sense, findings suggest that, despite possible idealised assumptions about GIs, these show *per se* an uneven effect on environmental quality.

GIs may act as an incentive contributing to environmental goals whenever the typical product “definition” incorporates “local” attributes of environmental value. The existing literature on GIs supports the idea that GI success depends on an optimal functioning of a process which begins with the identification of product qualities according to product definition (specifications), continues with the certification of these qualities and ends with the communication of certified product qualities to consumers (promotion and marketing). Findings show that whenever elements connected to the preservation of local environmental quality or biodiversity are a component of the product’s definition, then GIs may play a more important role in capturing extra revenues which derive from these environmental attributes<sup>38</sup>.

Common to some case studies on PDOs/PGIs are short production chains (production, processing, supply and marketing) and therefore shorter transport distances which reduce the use of natural resources and energy. While it is true that environmental requirements are rarely included explicitly in the specification of a protected GI, in all cases where environmental quality is the primary motivation leading to the establishment of the GI protection, the product is more likely to achieve an environmental benefit. The environmental benefits of the GI protected goods are often achieved through indirect secondary effects. In some cases the price premium associated with the GI protection enables farmers to maintain environmentally friendly production methods or to support environmentally beneficial flanking measures. Moreover, synergies with other sectors such as tourism contribute to the protection of traditional landscapes and habitats. Often local specialities are produced using production and/or processing practices which are to a large extent based on procedures which, in line with tradition, use hardly any or no technical processes which could be harmful to the environment, and/or farming systems which are non-intensive and therefore further biodiversity and protection of the countryside and the environment<sup>39</sup>.

According to another author, what makes GIs favourable to ecological sustainability is the notion of *terroir* - the link between the biophysical properties of particular places, the traditional practices that have evolved in that in these places, and the specific tastes and flavors (Bowen and Valenzuela Zapata 2009). This link is stronger in PDO than in PGIs and might suggest that the former are more favourable for ecological sustainability than PGIs.

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<sup>37</sup> EFNCP response to Green Paper on agricultural product quality.

<sup>38</sup> Trade, Intellectual property and sustainable development (IPDEV) is financed within the Sixth EU Framework Programme for Research and Technological Development (FP6).

<sup>39</sup> Leipprand, Gorlach, Keefe, Riccheri and Schlegel, "Assessing the Applicability of Geographical Indications as a Means to Improve Environmental Quality in Affected Ecosystems and the Competitiveness of Agricultural Products", Workpackage 3 of "Impacts of the Intellectual Property Rights (IPRs) Rules on Sustainable Development (IPDEV)" - Sixth Framework Programme. Available at <http://ideas.repec.org/p/ess/wpaper/id847.html>

**Extent of the problem.** There is no full picture on the effects of geographical indications on protection of environment. Some studies show positives effects, but they have to be taken carefully as: 1) They cover a limited number of sectors, and evidence from certain more industrial productions like beer, bakery, fish or spirit drinks is missing; 2) They concern mainly PDO schemes, for which specifications include farming practices.

Nevertheless, PDO/PGI schemes could present synergies when addressing environmental problems as they call for regular local governance and coordination. The requirement or possibility to draft specifications which include minimum production criteria would permit to impose environmental conditionalities.

While there may be coincidences between PDO-PGI production and environmental values, the PDO-PGI instrument is not an environmental tool and care should be taken before introducing an additional obligatory rule into an already exceptionally complex scheme. It is clear that producers should be able to maximise benefits to the environment and like any farmer must respect environmental rules, especially in fragile and protected environmental zones.

The possibility to encourage producers to include environmental conditions and benefits deserves further reflexion and discussion with stakeholders.

#### 2.1.2.5. Competition in the single market

The aim of the single market is the free movement of persons, goods and services and capital. PDO/PGI scheme can be seen as an exception to the free movement of goods and services, as it reserves to certain geographical areas the name used to describe a specific product. This is mainly justified on grounds of the protection of industrial and commercial property within the meaning of Art. 30 to the Treaty<sup>40</sup>, but is also necessary to avoid misleading consumers, in the same way that many (non-registered) geographical names could not be used to describe products from another place.

The exception may apply to production, processing and in some cases to packing, labelling or other operations like slicing of a ham and grating of a cheese, if the quality of the product, or control operations justify it.

There is an increasing diversity on how to apply the restrictions vis-à-vis the requirements of the single market on those operations, especially packing, slicing, etc. that requires a case by case analysis by the Commission services to asses if the restriction is justified as an exception to the freedom to provide services in the single market. In addition, following ECJ judgments in the cases concerning Prosciutto di Parma and Grana Padano, restrictions have to be made public by the Commission if they are to apply across the Member States.

For example, operators willing to packing, slicing, etc. a product near the sales place will need to check the public information or specifications in order to verify if there is a restriction reserved on that operation. If the operation is to be made in the geographical area, they would not be able to supply product labelled with the PDO-PGI name to their purchasers.

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<sup>40</sup> Another justification could be found in ensuring accurate information to consumers, as the system will prevent products not coming from the area to use a well known name.

A further issue that interferes with the free movement of goods is the restriction some specifications apply to the origin of raw materials. For a protected designation of origin (PDO) all the operations from production to elaboration of the final product, have to take place in the area, and as a consequence raw materials have to originate from the delimited area. For a protected geographical indications (PGI), only one step of the process (production, processing) has to take place in the area<sup>41</sup>. So raw material may come from anywhere outside the area.

Nevertheless, some PGI specifications do restrict the origin of place of farming to specific areas, on the basis of the impact that the quality of the raw material has in the final product.

The adoption of restrictions requires significant resources to the Commission services to be analysed as well as to be enforced in Member States. Enforcement bodies in every Member State have to ensure the enforcement of the protection of the name and the restrictions related to that product.

Green Paper Stakeholders say:

- Use of raw material of the region could be possible without justification (DE)
- Criteria needed for admissibility of restriction of origin of raw materials for PGI products (2 answers from academic organisations).
- It should be possible, without any justification, to restrict origin of raw materials to the PGI area, and if there is not enough production to extend the restriction to neighbour areas (bassins de production). This is justified by the territorial development objective that GI policy should have (some French respondents from meat sector).

Besides these two issues of conditioning and presentation and origin of raw materials, some other risks to the internal market may be linked to PDO and PGI schemes. **Dries and Mancini (2006)**<sup>42</sup> have identified the following types of risks for the internal market:

**Box 3:** "Interaction of Quality assurance schemes with the internal and external market  
Quality assurance schemes operate within the internal market..."

For agro-food products with a specified geographical name, particularly designations of origin, (but also agro-food products under other collective quality marks, for instance, Label Rouge in France), some degree of coordination is required between the stakeholders involved. This may entail coordination, both horizontally and vertically, in one of a number of forms. Producers and processors, while they may be independent firms, are linked in that they make a particular PDO product whose chief characteristics are set out in specifications. Research has shown the importance of coordination for traditional quality products, bringing out the various motivating factors (Boccaletti, 1992; Canali, 1997; Barjolle/Chappuis, 1999). The most frequent reason is the need, at the end of the processing stage, to arrive at a product with specific characteristics; this entails monitoring all along the chain. So a collective strategy is needed. Research based on transaction cost theory points out that, for products requiring a collective strategy, savings on transaction costs are more important than

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<sup>41</sup> The actual requirements are as follows:

PDO: Product must be produced and processed and prepared in the defined geographical area of production.

PGI: Product must be produced and/or processed and/or prepared in the defined geographical area of production.

<sup>42</sup> Food quality assurance and certification schemes – stakeholder Hearing 11/12 May 2006 – Background paper p. 31.

savings on production costs, which are often limited on account of the differentiation strategy and the firms' location (Barjolle and Chappuis, 2000). This is especially the case when different links in the food supply chain are dependent on the specific quality of a product from an upstream stakeholder. Barjolle and Chappuis (2000) illustrated this with the case of cheese ripening, producing and dairy operations in Switzerland. Quality assurance schemes (QAS) can in this case reduce the transaction costs between the stakeholders by the establishment of framework contracts which incorporate a mechanism to provide the sufficient product quality for the downstream food chain.

In any analysis from the viewpoint of competition policy, it is important to remember that designations of origin are not linked to the size of the market for the product. A number of countries have applied designations of origin to products of all kinds, with widely varying production structures. That means that reference markets are very different, and so are production volumes.

From the analysis of a number of cases where competition authorities have intervened in member countries, a number of risks of anti-competitive practices can be identified:

*(1) The risk of monopolistic cartels*

In several cases adjudicated in EU Member States, the authorities found that groups had taken measures to control total supply. In most cases the total annual supply programme was accompanied by a detailed breakdown of output, through quotas allocated to producers. To ensure that producers kept to their quotas, penalty arrangements were in place. Direct price control measures were occasionally found, either in setting price ceilings for purchasing raw materials (above those ceilings, the consortium reduced the quantity purchased) and or in imposing minimum resale prices on distributors. Such behaviour may be an attempt to exert monopsony or monopoly power. Even when direct price control practices were not found, the final production price was consistently supported due to the overall restrictions on output.

In most cases the groups or consortia put forward three main lines of defence. They claimed a legal foundation for their power to control production. They also argued that supply controls were essential for quality control. Finally, they pointed to the exceptions which some competition regulations allow to the general ban on understandings to restrict competition.

*(2) The risk of obstacles to market entry*

The risk of obstacles to new operators entering the market seems significant. The competition authorities observed practices restricting access for new producers. In the case of the output plan adopted by the San Daniele Consortium, it was found that a firm which wanted to start producing ham using that name could apply to the consortium for a production quota. In no event could the quota exceed 3% of the total output of consortium members. Similarly, in the French red label, discriminatory measures were detected for the admission of poultry-breeders (OECD, 2000).

With designations of origin as defined and regulated within the European Union, the right is a collective one belonging to all those living in a geographical area, and cannot be transferred. The use of these concept may, in practice, lead to a risk of obstacles to market entry. In the case of designations of origin, the conditions of entry to producer groups with a geographical name are often set out in the group's own statutes; this leaves it free to set conditions that may not be consistent with the free play of competition. It is quite difficult to make a general evaluation on the possible risk of obstacles to market entry linked to the use of a designation of origin or of a certification mark. A case-by-case approach seems to be the most appropriate one.

*(3) The risk of over-administration or over-regulation*

It should be noted that excessive bureaucracy surrounding designations of origin can only be harmful for producers and consumers alike. It could greatly slow the registration process. Similarly, any administrative arrangements for products with designations of origin might provide producers and processors with insufficient stimulus. They might eventually associate the success of their product with the right to use the designation. As the designation itself becomes a hallmark of quality, there is a danger that the producer might not respond to market signals. The whole process might discourage innovation.

While coordination in a food chain under designation of origin is recognised to be important, there is still a risk that coordinating channels, and the agreements that result, will impede proper market operation. There is a danger that producers will push market prices up by cutting the volume of total supply. Placing ceilings on supply, and allocating quotas to producers, seems rather to be a way of overcoming structural failures in control systems. Groups of producers (consortia) state that production standards can be maintained only via ceilings on supply, rather than by other methods of quality control. It is noteworthy that most of the output plans criticised by EU competition authorities are based on historical or territorial criteria. Starting from a given reference year, total supply is allocated among producers on the basis of that year's quotas. Unless production quotas are



allocated on grounds of relative efficiency, consumers are likely to pay more because supply is held down and at the same time forgo the benefits that enhanced productivity would bring. Producers, compelled to stay within their quotas, lack the incentive to operate more efficiently. There may as well be an impact on the quality of the end product (...).

**Extent of the problem:** Restrictions authorised in the specifications of protected geographical indications and protected designations of origin may interfere with the internal market. Their adoption needs case by case analysis, as well as their implementation.

#### 2.1.2.6. Intellectual property problems

Four types of problems have been identified:

- Differences in perception of the right to use and advertise on the use of PDO/PGI products as ingredients in processed products.
- Confusion in level of protection against other uses, notably: long usage, varieties and breed names, trademarks, generic, and continued/changing uses in future.
- No crystal clear criteria to assess generic character of a name.
- Enforcement applied differently among Member States.

#### (1) Differences in perception of the right to use and advertise on the use of PDO/PGI as ingredients

##### Legal position

Current Regulations on geographical indications (wine, spirits and agricultural products and foodstuffs) do not provide any specific guidance on how to deal with the identification and the advertising of PDO/PGI products used as ingredients in processed products. For example how to advertise in a label that a pizza contains a (or several) PDO cheeses, i.e. identified by their registered name(s) in the sales designation or other display material on the packaging of the product.

The protection provided to PDOs and PGIs<sup>43</sup> provides that the registered name shall be protected against (a) use of the registered name on a different product in so far as the name exploits the reputation of the protected PDO name, and (b) any evocation of the original product. In the pizza example, it could be argued that the PDO cheese name is being used in respect of a pizza (which is not covered by the PDO cheese registration) and that the intention of the reference to the PDO cheese on the packaging is precisely to "evoke" the original PDO cheese and benefit from the reputation of the PDO cheese. At the same time the cheese on the pizza is not in a form laid down by the specification as it has been partially processed, so whether referring to the pizza as a whole or only to the cheese on it, the product does not correspond to the specification of the registered PDO.

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<sup>43</sup> E.g. Article 13(1) and (2) of Regulation (EC) No 510/2006.

Thus, on the one hand, it may be possible to argue that the use of PDO names as ingredients in processed products is already prohibited by existing rules<sup>44</sup>. On the other hand, it could equally be argued that the PDO name is referring to the original product that (we assume good faith in this example) was the originating product and its use in the advertising of the pizza is acceptable under an assumption of "fair use".

### Policy

Use of PDO/PGI products as ingredients in processed products represents an opportunity to extend outlets of PDO/PGI products and in many cases the use of these ingredients continues a long-held culinary tradition of using fine ingredients in prepared foods. In that sense, a majority of Member States consider that the use of PDO/PGI as ingredients in a further processed product creates more opportunities than difficulties<sup>45</sup>. The identification of PDO/PGI products used as ingredients on the packaging of the processed products could also offer an opportunity for promotion of the name to a wider audience at relatively minor cost. Indeed no one seriously opposes either the use of PDO-PGI products as ingredients in processed foods, nor the reasonable use of the names in advertising on the labels. The policy issues that arise are:

- How to apply rules on not misleading the consumer?
- Should the producer of the PDO/PGI product have any explicit intellectual property rights over the use of the name on processed products, and hence control over use of the product?

### Not mislead consumer

The reference to PDO/PGI products used as ingredients on the packaging of processed products can potentially cause difficulties for producers or consumers. For instance:

- There may be consumer confusion if the ingredients of a processed product include a PDO/PGI product and a non-PDO/PGI product of the same class. In such a case, the packaging of the processed product may induce the consumer to believe that the processed product uses only or mainly the PDO/PGI product as an ingredient whereas in reality the share of the non-PDO/PGI product in the particular type of ingredient may be substantial.
- The lack of guidance may also create an unlevel playing field for producers of similar processed products using similar ingredients if one of the producers provides unclear information about the precise significance of the PDO/PGI as an ingredient while other producers provide detailed information about the relative shares of the PDO/PGI product and the similar non-PDO/PGI product in the make-up of the processed product.

From the point of view of consumer associations (Evaluation of CAP policy on PDO/PGI – 2008), there is no evidence that labelling of PDO/PGI ingredients in processed products has led to confusion for consumers in Denmark, Spain, France, Greece, Germany, Hungary, Italy

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<sup>44</sup> In this sense, see Hartmann, Reference to a protected geographical indication on a composite food product, 'With Spreewa'lder Gherkins' ('mit Spreewa'lder Gurken'), District Court Berlin, 23 August 2005 *Journal of Intellectual Property Law & Practice*, 2006, Vol. 1, No 5.

<sup>45</sup> Progress report from Working Party on Agricultural Product to the Special Committee on Agriculture on the Green Paper on agricultural product quality – December 2008. Commission prop. No 14358/08.

and Sweden. In the UK, no information is available on consumer perceptions of White/Blue Stilton cheese as an ingredient, which suggests this has not been a major issue.

In the framework of the Evaluation of PDO/PGI, no other problems have been reported by producers or consumer associations in the country case studies.

#### Legal arrangements between producers of PDO and processors

In the framework of the "Evaluation of the CAP policy on PDO/PGI" no ECJ and CFI cases were found which relate to PDO/PGI products used as ingredients in processed products. However, the case studies under that evaluation show that different approaches can be found in the Member States in relation to the identification of PDO/PGI ingredients in processed products:

- Only one Member State, Italy, has developed national legislation regarding the identification of PDO/PGI ingredients in the name and packaging of the processed products using PDO/PGI products as ingredients.
- In two Member States (Spain and the UK) a few agreements have been made between the producers' groups of certain PDO/PGI products and food processors using the PDO/PGI product as ingredients.
- In Germany, following a legal dispute, a temporary agreement regarding the reference to a PGI used as an ingredient on the packaging of a processed product was reached between producers of the PGI Spreewälder Gurken and a processor using the product as an ingredient.
- In some cases, producers have worked with manufacturers to agree the approach to labelling the products.
- In Italy, the two main Consortia (Parmigiano Reggiano and Grana Padano) have not encountered any problems relating to the labelling of ingredients on Italian-processed products, following the adoption of the law.
- In Spain, no instances have been reported of specific problems between producers of the Turrón de Jijona and producers using it as an ingredient
- In the UK, in the case of the voluntary approach for White/Blue Stilton cheese, there have been no disputes between producers of the cheese and manufacturers using White/Blue Stilton cheese as an ingredient.

#### **Green Paper Stakeholders say:**

Majority of respondents call for a framework to regulate the use of PDO/PGI as ingredients. On the other hand, other respondents, mainly processors, claims that use of PDO/PGI as ingredients should be free: licence agreement should not be the rule. The rules of Directive 2000/13/EC should be the only legal text applicable.

- Some organisations, for example the Association of European Regions for Origin Products (AREPO) propose legislation regulating both the use of the ingredient and the advertising of the ingredient on the label, designed to:

- give producer groups the right to authorise (and the right to prevent) the advertising of the registered name of the ingredient in a processed product.
- allow free use of the ingredient if there is no advertising (but under producer group surveillance). This would extend the property right from the name to the product.
- exercise producer group rights in cases where the ingredient is used in a foodstuff so that its characteristics are modified (e.g. by cooking). Controls could be carried out by the producer group and/or national authorities.

The EESC believes it is necessary for all stakeholders which are part of the applicant associations (protection consortia etc.) to agree on the criteria and parameters established regarding the GI-ingredient content required for the PDO and PGI labels to be used on the finished product<sup>46</sup>.

**Extent of problem:** in theory, the lack of guidance on how to deal with the identification of PDO/PGI products used as ingredients in processed products may lead to consumer harm and detriment, and create an unlevel playing field between producers of processed products. However, the information and evidence reviewed during the Evaluation of the CAP policy on PDO/PGI and the declarations of the majority of Member States suggest that, so far, this does not appear to actually have been the case nor is it perceived as being the case. Moreover, it appears possible for PDO/PGI producers to come to a private agreement or arrangement on the identification of PDO/PGI used as ingredients with processors using their PDO/PGI products. Nevertheless, during the Green Paper consultations, several stakeholders asked for a framework to use and advertise on PDO and PGI when used as ingredients. Therefore, there may be need to provide specific guidance on how to deal with the identification of PDO/PGI products used as ingredients in processed products.

- (2) Confusion in level of protection against other uses, notably: long usage, varieties and breed names, trademarks, generic, and continued/changing uses in future and all these in translation

Current position based on Regulation (EC) No 510/2006:

When a name is proposed for registration as a PDO/PGI, existing users of the name are given an opportunity to object to the registration on the grounds that they use the name on products not covered by the registration proposed. These grounds are listed in Article 7(3), points (b), (c) and (d). Depending on the circumstances, the objection might prevent registration of the proposed PDO/PGI (which will then be rejected), the intellectual property right of a prior use and the PDO/PGI might coexist under certain conditions, the prior name may coexist for a temporary period of time, following which its use must cease, or the cessation of use might apply immediately from registration of the PDO/PGI.

The situation could be improved regarding the following aspects:

- the grounds for coexistence may appear unclear, particularly regarding some forms of intellectual property right;

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<sup>46</sup> Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

- there appear to be some cases of prior usage where an objection cannot be filed even though the registration would prevent that usage. This does not allow such prior users the opportunity to defend their interests;
- the scope of protection of a PDO/PGI may cover names and usages that were not apparent — neither to the prior user nor to the PDO/PGI user — at the time of the application and publication for objection.

See Annex V for a summary of the types of uses, grounds for objection and possible outcomes in case of a conflict.

The regulations provide with different phase-out periods:

-- "adjustment period" may be granted to producers from the Member State where a PDO/PGI originates, if they can show a legal use of the name for at least the past five years before the registration (and have made that point in the national objection. It may not exceed 5 years and ceases when a decision on the registration of a name is taken.

-- a "transition period" of 5 years may be granted to enterprises established in the EU or a third country provided they have legally marketed producer that market and an admissible statement of objection has been submitted. Those enterprises may market within the EU the product under the protected name during that period, if they can show they have marketed legally the product in the market for at least 5 years before the date of publication for objection).

-- "super-transition period" of 15 years may be granted to identical names to the registered name, when it can be shown a legal use consistently and equitable since 24 July 1968 and the purpose of the use of the name has not been to profit from the reputation of the registered name and the consumer could not be misled as to the true origin of the product.

*Is there a need to clarify or adjust any aspects of the rules laying down the rights of geographical indication users and other users (or potential users) of a name?*

Green Paper stakeholders say:

About half of the contributions made clear that the current framework laying down the rights of geographical indication users and other users is sufficient. Different issues have been raised by the other half of respondents. Among the aspects for which clarifications have been asked most often, were:

- **the need to clarify the rights, duties and tasks of applicant groups.** This was done by several regional authorities, farming organisations, a trade organisation, many processing organisations, some individuals of the general public, academic organisations and quality organisations (within the category other). In this regard more specific items were asked to be clarified such as: the ownership of the intellectual property right of the geographical indication, the right to determine the volume of production, the right to determine the use of a geographical indication as an ingredient, the defence and protection of the geographical indication, the right to make certain operations obligatory in the area, the promotion of the geographical indication, the right to adapt the size of the logo to the specificity of the product. While the majority simply asked to clarify the issue, some farming organisations, regional authorities, individual consumers and quality organisations asked to give more powers to producer groups in relation to these issues. Several trade and processing organisations expressed against this.

- **Implementation of Articles 13 and 14 of Regulation (EC) 510/2006.** Some respondents (one national authority and two organisations from the category "other") have asked to better define the concepts on the scope of the protection. These two organisations (INTA and INBEV) stated that of the scope of protection extends to translations, evocations and indirect commercial use, that ability to search potential names by third party users of a designation is made much more difficult and thus decreases legal certainty. It was therefore proposed to bring the scope of protection for geographical indications in line with the scope of protection of trademarks.

ORIGIN considered there is a need to explain to national trademark offices and the Office for the Harmonisation of the Internal market (OHIM) not only the application of Articles 13 and 14 of Regulation (EC) 510/06 but also the Articles 44 and 45 of Regulation (EC) 479/2008 and articles 16 and 23 of the Regulation (EC) 110/2008. This organisation expressed that by virtue of these legal provisions, trademarks' applications identical or confusingly similar to a geographical indication must be refused.

A retail organisation (Carrefour) expressed concern about the refusal of trademarks with a connotation of label thereby referring to own brand quality label, because they potentially could be competitors to PDO/PGI quality labels.

INTA and INBEV and a national authority (NL) expressed some concern concerning the coexistence provisions of Article 14 (2) of Regulation (EC) 510/2006. These provisions could be read in a manner as to suggest that the use of a trademark filed long before the geographical indication application, but later than 1 January 1996 might be prohibited if the geographical indication had been protected in the country of origin at an earlier date. Respondents considered this would be a clear violation of the TRIPS Agreement, fundamental property rights guarantees and the basic principles of priority and territoriality. In this regard it was requested that the language of the coexistence provisions of Article 14(2) of Regulation (EC) 510/2006 and Article 23(2) of Regulation (EC) 110/2008 be amended so as to clearly reflect the priority principle enshrined in Article 16 TRIPS and the Paris Convention, and to bring it in line with Article 44(2) of Regulation (EC) 479/2008 and the previous provision of Article 14(2) under Regulation (EC) 2081/92 before the adoption of Regulation (EC) 510/2006. In addition it was suggested to make clear in the text of Regulations (EC) 510/2006 and 110/2008 that the beneficiaries of geographical indication protection are not entitled to object to the use of a trademark filed in good faith (or obtained by use, if available) before the date on which the application for protection of the geographical indication was submitted to the European Commission.

One farming and one processing organisation from Germany explained that Article 14 (2) of Regulation (EC) 510/2006 and article 44 (2) of Regulation (EC) 479/2008 should be more consistent.

Scotch whisky association expressed that for some earlier registered spirit names which have been listed in Annex III of Regulation (EC) 110/2008, the rights of other users might not have been properly weighted as they will not have gone through an objection or opposition procedure at EU level

**Use of geographical indications as ingredients (this issue is treated more extensively under point below).**

Stakeholders have also mentioned in the Green Paper consultation the need to **clarify rules for use of indication of origin, vis-à-vis geographical indications**, to avoid competitions between the 2 approaches. Some farming organisations (as COPA-COGECA) asked to define a clear borderline between trademark protection and geographical indication protection and suggested to limit the registration of trademarks containing geographical indication terms. A similar idea was expressed by a national authority (Slovakia) who wanted to have tighter rules for use of geographical names, especially by trademark holders. Some individuals from the farming sector asked to reinforce protection against trademarks that try to link themselves to geographical indications.

A consumer organisation highlighted that confusion arises when a trademark uses very similar or, identical terms as a geographical indication for a products of the same category (FR). Euromontana mentioned that it would be less confusing for consumer if only a geographical indication was allowed to use a geographical name.

### **Extent of the problem:**

1. Difficulties may arise of not knowing scope of protection: matters as translation distant from original and evocation not understood until years later (the Court considered Parmesan was at least evocation).

2. Some potential problems:

- Language of some grounds for an objection do not coincide with the scope of protection: thus in certain cases it could be interpreted that a prior user has no ground under which to lodge an objection, although s/he may lose the possibility to use the name once the PDO/PGI is registered.
- Some grounds for an objection do not qualify as sufficient to prevent registration: the only result is cessation of use, while the objection may permit a limited transition period.

3. Some unclarities as to describe "similar" uses:

- "conflict" under criteria of Art. 7(3)(b): registration would be contrary to Art. 3(2): "a name may not be registered where it **conflicts** with the name of a plant variety ... and as a result is likely to cause consumer confusion
- "confusion" criterion: Art. 7(3): "actual risk of confusion"
- "similar", "evocation..." Art. 13 on protection

4. Complexity as to phase-out periods: complexities of "adjustment period" as well as "transition period" (which is often considered too short) and "super-transition period".

### *(3) No crystal clear criteria to assess the generic character of a name*

In general usage, 'generic' is a term used to refer to a broad category of similar products, but that may be used to describe all of the products and brands within that category. Very often, a generic product name originates as the name of the most successful brand name in that category and enters common parlance to refer to all products with the same broad functionality and/or characteristics. In the case of geographically-linked products, a generic name is one which, although it relates to a place or region where a product was originally produced, has entered common usage to designate a category of products that do not necessarily originate in the region with the same name.

Under current Regulations, generic names cannot be protected as PDO or PGI<sup>47</sup>.

Regulation (EC) No 510/2006 provides broad rules for establishing whether a name has become generic. According to Article 3(1) of the Regulation:

“To establish whether or not a name has become generic, account shall be taken of all factors, in particular:

- (a) the existing situation in the Member States and in areas of consumption;
- (b) the relevant national or Community laws.”

Furthermore, names which have been registered cannot become generic (Article 13(2) of Regulation (EC) No 510/2006). If a registered name contains within it a generic name for an agricultural product, the use of that generic name is permitted on an appropriate non-registered product.

Under repealed Regulation (EEC) No 2081/92 (Article 3(3)), the Council was required, upon a proposal by the Commission, to draw up and publish a non-exhaustive, indicative list of generics before the entry into force of the Regulation on 25 July 1993. Products' names on the list would have been deemed to be generic and not been able to be registered. The Commission made a proposal for a list of generics in 1996<sup>48</sup>, but the required majority in the Council was not attained. The Commission withdrew the proposal in 2005<sup>49</sup>, and no list has been agreed to date. The current Regulation (EC) No 510/2006, which replaced Regulation (EEC) No 2081/92, does not provide for a list of generics.

What exactly constitutes a generic name is a matter for considerable debate and has been a key cause of friction between Member States in the EU. Feta has been the most contentious name: Danish producers *inter alia* argued that Feta was produced in Denmark from the 1930's and at later dates in other European countries, and were of the view that it is a generic name. Feta was finally registered as a PDO in October 2002<sup>50</sup>.

Similarly, the European Court of Justice recently ruled that it has not been established that Parmesan is a generic name and that only cheeses bearing the protected designation of origin (PDO) 'Parmigiano-Reggiano' can be sold under the denomination 'Parmesan'<sup>51</sup>.

#### Analysis of ECJ and CFI cases

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<sup>47</sup> Article 3(1) of Regulation (EC) No 510/2006 defines a generic name as:  
“the name of an agricultural product or a foodstuff that, although it relates to the place or region where this product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or foodstuff”.

<sup>48</sup> Proposal for a Council decision drawing up a non- exhaustive, indicative list of the names of agricultural products and foodstuffs regarded as being generic, as provided for in Article 3(3) of Council Regulation (EEC) No 2081/92, COM(1996) 38 final.

<sup>49</sup> COM(2004) 542 final/3.

<sup>50</sup> Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ L 277, 15.10.2002, p. 10).

<sup>51</sup> Case C-132/05: Judgment of the Court (Grand Chamber) of 26 February 2008 — *Commission of the European Communities v Germany* (OJ C 92, 12.4.2008, p. 3).



For the purposes of the "**Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)**" the following cases related to the generic status of products have been identified: Feta, Grana Biraghi and Parmigiano Reggiano. Considering that the PDO/PGI scheme has been in place for 15 years, the number of Court cases concerning the generic status of names is quite small.

**Box 5: Case studies (Feta, Grana Biraghi and Parmigiano Reggiano)<sup>52</sup>**

**Feta:** In the dispute about Feta cheese, the ECJ had to decide on the criteria for determining a generic product. The Greek government had applied for registration of "Feta" as a PDO in 1994. Due to disagreement about the generic status of feta, the Commission conducted a comprehensive consumer survey and sought the opinion of the competent Scientific Committee. On this basis, it decided not to include feta cheese in its proposed list of generics, and registered Feta as a PDO.

Other Member States challenged the registration in the *Feta I* case before the ECJ.<sup>53</sup> In 1999 the ECJ annulled the registration because the Commission, in deciding whether 'feta' was a generic name, had not taken due account of all the factors listed in Regulation (EC) No 2081/92. In particular, it had not taken any account of the fact that the name had been used on existing products which were legally on the market and had been legally marketed for a considerable time in certain Member States, other than Greece.

The ECJ ruled that the contested registration of "Feta" PDO had to be annulled. Accordingly, the Commission started a new inquiry about the status of feta on the basis of a questionnaire sent to Member States. The information received was presented to the scientific committee, which in 2001 concluded unanimously that the name 'feta' was not generic in nature. In October 2002, the Commission again registered the name 'feta' as a PDO. This registration was once again challenged by certain Member States before the ECJ in the *Feta II* case.<sup>54</sup> This time, the ECJ held that the registration was valid. The Commission had taken all relevant factors into account, and several relevant and important factors indicated that the term had not become generic.<sup>55</sup>

**Grana Biraghi:** In the recent *Grana Biraghi* case,<sup>56</sup> an Italian association of producers of Grana Padano cheese challenged the trademark Grana Biraghi, which had been registered as a community trademark. The association maintained that the trade mark was contrary to the PDO for Grana Padano cheese. The defendant claimed that the PDO protection only covered the expression "Grana Padano" as a whole, whereas the word "grana" was generic and its use therefore not contrary to the PDO protection. The CFI held that the word "Grana" was not generic in nature and therefore the trademark Grana Biraghi was invalid.

**Parmigiano Reggiano:** In this case, the Commission, after complaints from several economic operators, brought proceedings against Germany for failing to ensure on its territory the protection of the PDO 'Parmigiano Reggiano' against products designated as 'Parmesan' which did not comply with the specification for the PDO. The case concerned Regulation No 2081/92.<sup>57</sup>

Germany argued that a PDO was only protected in the exact form in which it is registered, and that therefore the label "Parmesan" did not infringe the PDO 'Parmigiano Reggiano'. Further, Germany argued that 'Parmesan' had become a generic name for hard cheeses of diverse origins, grated or intended to be grated, distinct from the PDO 'Parmigiano Reggiano'. The ECJ rejected both arguments.

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<sup>52</sup> "Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)" carried out by London economics 2008.

<sup>53</sup> Joined Cases C-289/96, C-293/96 and C-299/96 *Denmark and Others v Commission*.

<sup>54</sup> Case C-465/02 – *Germany and others v Commission*.

<sup>55</sup> Case C-465/02 – *Germany and others v Commission*, para 70 et. seq.

<sup>56</sup> Case T-291/03 - *Consorzio per la tutela del formaggio Grana Padano v OHMI - Biraghi (GRANA BIRAGHI)*, judgment of the Court of First Instance of 12 September 2007.

<sup>57</sup> Case C-132/05 *Commission v Germany*.

While majority of Member States against, a minority of Member States and some stakeholders<sup>58</sup> still ask for a list of generics to be proposed by the Commission. Nevertheless if a list would have had the benefit of providing some clarity and reducing uncertainty over marketing and production<sup>59</sup>, it would not provide certainty, on the names that could not be registered as PDO or PGI. As a matter of fact, any Member State or any natural or legal person directly and individually concerned could have sought the annulment of the list within 60 days of adoption under Article 230 of the Treaty or may have questioned or question in the future the validity of the list under Article 234 of the Treaty.

The issue of genericity of names is especially relevant to the names of cheeses. The proposal Commission submitted to the Council in 1996 was only containing cheese names. ECJ cases on genericity are mainly related to dairy sector, as Parmesan or Feta case. Answers of dairy sector to the question on genericity<sup>60</sup> in the Green Paper confirm that interest.

On the basis of a case by base analysis, stakeholders have proposed some following criteria:

- The name is considered generic according to a judgment of the European Court of Justice (EDA, ORIGIN, Belgium, and several regional and local authorities as well as farming and processing organisations);
- Length of use (regional authorities, farming organisations)
- Reputation no longer linked to the area
- The name has been considered generic in a bilateral agreement (EDA, Eucolait)
- Situation in the country of origin (Spain, Czech Republic, AREPO, Origin).

Argentina also asked in the consultation to take into account the translation of terms that might be generic outside the EU.

The following criteria refer mainly to cheese names:

- The name is registered according to Art. 13.1-2 of Regulation (EC) No 509/2006 on traditional specialities guaranteed (e.g. Mozzarella) (EDA, Eucolait);
- The name of the foodstuff is subject to a Codex standard<sup>61</sup> (EDA, EUCOLAIT, Lithuania and others)

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<sup>58</sup> Germany, Greece, Eucolait (Green Paper consultation 2008).

<sup>59</sup> Evaluation of the CAP policy on Protected Designations of Origin (PDO) and Protected Geographical Indications (PGI) carried out by London economics, 2008.

<sup>60</sup> The question reads as follows: What criteria should be used to determine that a name is generic? p. 13 of Green Paper consultation on quality policy.

<sup>61</sup> The Codex Alimentarius Commission was created in 1963 by FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purposes of this Programme are protecting health of the consumers and ensuring fair trade practices in the food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organisations.

- The name of the cheese is mentioned in the footnotes of Regulation (EC) No 1107/96 (“the protection of the name X is not applied”); (EDA, several processing organisation industries)

Nevertheless a judgement of the European Court of Justice ruled that as regards a "compound" designation of origin the fact that there is no footnote in the annex to Commission regulation (EC) No 1107/96 (...) specifying that registration is not sought for one of the parts of that designation does not necessarily mean that each of its constituents is protected<sup>62</sup>.

- The name has been mentioned in annex B of Stresa Convention<sup>63</sup> (EDA, Eucolait).

In addition some stakeholders (EDA, Eucolait) have proposed a new criterion for registration, according to which applicant should prove the non-generic character of the name of the agricultural product or foodstuff for which protection is sought. International Trademark Association (INTA) opinion stresses also the importance to assess the absence of genericness during the GI registration procedure.

Finally, the EESC<sup>64</sup> recommends that "*Inter alia* in the light of disputes that have arisen to date, (...) creating more finely-tuned instruments for establishing more easily the longstanding existence and/or reputation of a name, such as an authority (or adjudication board) which could act as a buffer and/or provide oversight regarding potential PDOs within the EU Member States, or other such forums for out-of-court settlement".

### **Extent of the problem**

Given the important role that certainty and a stable operating environment has in relation to financial planning and investment decisions, uncertainty as to whether any particular product name may be designated as ‘generic’ may lead to a loss of investment (e.g. required to meet the specification of a PDO/PGI, or in terms of investment in marketing of a sales name). Whereas, if there was absolute certainty about a list of generics, then producers of a sales name that was not on such a list would know that the name is not generic, and so they could proceed with confidence.

Therefore, the existence of a list would be unlikely to reduce uncertainty by much as legal challenges would still be feasible. The Feta case highlights the high public and private cost of such a challenge, whether challenging or defending generic listing.

That being said, disputes over the generic character of a designation are rare.

Additional criteria to assess the generic character of a name would be difficult to adopt, as they would be either general criteria (as the current ones) or specific for a precise group of

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<sup>62</sup> Judgement of the Court of 9 June 1998 in Joined Cases C-129/97 and C-130/97, OJ C 258, 15/08/1998 p. 3.

<sup>63</sup> International Convention on the Use of Appellations of Origin and Denominations of Cheeses, (*Journal Officiel de la République Française*, N° 5821), available at: [http://www.admin.ch/ch/f/rs/0\\_817\\_142\\_1/index.html](http://www.admin.ch/ch/f/rs/0_817_142_1/index.html)

<sup>64</sup> Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

products. In that case we could predict, following discussions in the Council on the list of generic, a difficult adoption of the criteria in the Council.

*(4) Enforcement applied differently among Member States*

Enforcement of the intellectual property rights of a geographical indication falls within the competence of Member States. The "Evaluation of the CAP policy on PDO/PGI" has shown a significant diversity (...) in the market surveillance. Only two Member States were identified as employing resources specifically dedicated to the protection of PDO/PGI names in the market place: in the first one, one official makes routine inspections of every supermarket on a monthly basis to detect fraudulent practices related to PDO/PGI products.

In the second, some enforcement activities are undertaken by regional authorities and inter-professional bodies representative of producers involved in each PDO/PGI. Inter-professional bodies have their own resources to survey the enforcement of the Regulation. In addition, other public authorities collaborate to enforce the regulation at issue.

In other countries the enforcement of the PDO/PGI scheme in the market place is typically undertaken as part of the general enforcement of Food law.

On the other hand, some producers complain about the lack of enforcement of the protection in other Member States and even in the Member State of origin. A Greek producer group mentions for instance that retailer's lack of enforcement where related to misuses (Survey to producers, 2007). Producers also mention the necessity to reinforce policy against counterfeiting and piracy.

***Are any changes needed in the geographical indications scheme in respect of the enforcement of the protection?***

A majority of respondents among farming organisations, regional authorities, individuals from the farming sector, processing organisations, consumer organisations, academic organisations and one retail organisation, expressed that there is a need for a better enforcement of protection (administrative enforcement) within and between Member States.

In particular, investigation procedures and sanctions of control bodies should be harmonised at EU level.

Different options in this regard have been proposed:

- Definition of EU guidelines;
- Inclusion of an explicit reference in Article 13 of Regulation (EC) No 510/2006.
- The creation of an EU structure, such as an European Agency for geographical indication to facilitate the management and the protection of GIs (both within the EU and in third countries). The example of European Patent Agency (located in Munich) was mentioned as well as some possible locations in existing agencies: OHIM (Alicante) or EFSA (Parma).

Some contributors stated the need for a clear identification of competent authorities in charge of protection. In addition, some respondents indicated cooperation between competent authorities and control bodies in different Member States should be reinforced.

### Extent of the problem:

Non harmonised enforcement of intellectual property rights linked to geographical indications. The issue deserves more in depth analysis in order to assess impediments to the smooth operation of the internal market in the products marketed under the PDO/PGI scheme.

#### 2.1.2.7. Other problems:

Possibility raw material is not farmed in the geographical area.

Regulation (EC) No 510/2006 and provisions of Regulation (EC) No 479/2008 and Regulation (EC) No 110/2008 do not provide any guidance on how to deal with information on the origin of raw materials used in PGI products.

A recent evaluation of Regulation (EC) No 510/2006<sup>65</sup>, shows that premium value of PDO/PGI products lies in the association consumers make with specific raw materials and ingredients, artisan processes and aspects of product quality. The designation of origin of the product may lead consumers to infer that the raw materials and processing take place within the area<sup>66</sup>. That being said, some exceptions to the PDO requirements are allowed<sup>67</sup>.

In general, consumers do not raise concerns about the origin of raw materials. However, this might be related to their low knowledge of the PDO/PGI schemes and, in particular, of the issues related to the sourcing of the raw materials. Or they might not conceive that the raw material could come from outside the area of production of the GI.

Analysis of cases before the ECJ (European Court of Justice) and CFI (Court of First Instance)

The only court case at the European level concerning the origin of raw material in a PGI is the *Spreewaldgurken* case<sup>68</sup>. The case considers whether the PGI is invalid<sup>69</sup>, partly on the grounds that the designation leads consumers to believe that the ingredients (the gherkins) come from an area much smaller than that specified. However, the ECJ did not rule on the

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<sup>65</sup> Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

<sup>66</sup> The actual requirements are as follows:

PDO: Product must be produced and processed and prepared in the defined geographical area of production.

PGI: Product must be produced and/or processed and/or prepared in the defined geographical area of production.

<sup>67</sup> For example, the PDO “Prosciutto di Parma”, must be produced in the defined area in the Province of Parma which includes land in the Province of Parma (in the Region of Emilia-Romagna, Italy) lying within 5 kilometres south of Via Emilia at an altitude of no more than 900 metres, defined to the east by the Enza river and to the west by the Stirone river. However, the raw material originates in a geographically wider area than the production area, including all municipalities in the following Regions: Emilia-Romagna, Veneto, Lombardy, Piedmont, Molise, Umbria, Tuscany, Marche, Abruzzi and Lazio (Italy).

<sup>68</sup> C-269/99 - *Carl Kühne GmbH & Co. KG* and others v. *Jütro Konservenfabrik GmbH & Co. KG*.

<sup>69</sup> The applicants were producers of pickled gherkins competing with the defendant, who used the PGI on its products. The applicants sought an order in a German court prohibiting the defendants from using the PGI. The defendant argued that the PGI registration was invalid.

origin of the raw materials used in the PGI, and left the decision on this point to the courts of the Member States.

### Situation in Member States

In some Member States consumer groups<sup>70</sup> have expressed concerns that consumers are being misled with regard to the origin of raw materials. This is detailed in the box below.

#### **Box 7. Case studies**

##### **Italy**

The retailers and Consorzi interviewed for the Italian case study believe that most consumers do not know the characteristics of the product specifications for PDO/PGI products. As a consequence, few consumers know the characteristics that PDO/PGI products “should” have. This is especially relevant for PGI products where the origin of the raw materials (in particular beef) may be distant.

In Italy, the case of Bresaola della Valtellina PGI (a processed meat product) has recently come to public attention. The product is being produced by some firms using meat from Bovine-Zebu in Brazil. According to these firms, the Brazilian meat has specific characteristics which are suitable as an ingredient for the final product.

The Slow Food Association and a farmers’ union (Coldiretti) claim that this is an important example of consumers being misled because they have no knowledge of the true origin of the meat. Despite this, only one newspaper (La Repubblica) has dedicated a full page to the topic while other newspapers have given it much less coverage.

However, the Consorzio della Bresaola della Valtellina has not concealed the origin of the meat. On the website of the Consorzio it states: “Beef meat used in the production process, mostly from South America, is carefully selected by Bresaola’s producers and obtained only from wild living animals, the most suitable for the production of Bresaola della Valtellina”.

The issue of information on the origin of ingredients in PGI products also arises for other processed PGI products from Italy. In the cases of Speck dell’Alto Adige, Mortadella di Bologna, Zampone di Modena and Cotechino di Modena the origin of the raw material is not defined in the product specifications.

##### **Germany**

The Federation of German Consumer Association (VZBZ) and the producers’ group of Spreewälder Gurken stated that there is no evidence that consumers were confused as a result of the specification of origin of the Spreewälder Gurken (and the fact that 70% of the raw materials must be produced within the area).

However, VZBZ has criticised the PGI more generally for misleading consumers. In its view, the PGI suggests a regional origin of a product whose raw material ingredients might in reality come from many other parts of the world. In a position paper, the VZBZ describe some products where this is the case:

- “Nürnberger Lebkuchen” is a bakery product which is processed in Nuremberg but contains ingredients sourced from many parts of the world.
- For “Schwarzwaldforelle” it is not required that the trout be raised and fished in the Black Forest region;
- Meat products such as “Schwarzwälder Schinken” or “Ammerländer Schinken” use meat from different regions and only the processing has to take place in the defined area in order to be eligible for PGI protection.
- In the case of Lübecker Marzipan, the VZBV expressed the view, after consulting all consumer organisations at the State level, that there is no evidence of consumer confusion, reflecting the fact that consumers know that almonds do not grow in Germany.

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<sup>70</sup> Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

**Belgium**

The consumers' association interviewed in Belgium (Test Aankoop) believes that consumers are misled when it is not indicated whether at least the most important raw material ingredients in PGI products originate from the designated region of production.

**Hungary**

The issue is that a number of paprika producers were selling a mixture of Hungarian and South American paprika under names or labels incorporating the paprika producing regions' names. While consumers appear to have been unaware of this fact, it became a major issue in Hungary when aflatoxin contaminated paprika from South America was used by the producers. At issue was the combination of the use of an unsuitable product (the South American paprika) and the use of an origin label which misled consumers to believe that the paprika they bought was from the region mentioned on the package. This example is not directly concerned with the lack of information on the origin of raw materials in PGI products, as Szegedi Fűszerpaprika Öremény is applying for a PDO, not a PGI. However, it highlights the potential consumer protection that a PDO provides, because if the PDO is granted all paprika used in the product will have to come from the region, which would not necessarily be the case if a PGI were given instead.

In Spain and Greece, consumer associations were asked about this subject but they did not raise any concerns. Concerns are limited in Denmark, Sweden and the United Kingdom because consumers have a very limited knowledge of the PDO/PGI schemes. Consumer associations were also contacted in France, but no information was provided on the subject.

The issue of non-information on raw material origin used in PGI products is complex. The impact of such lack of information depends entirely on whether the consumer subjectively believes that all the ingredients in a PGI are from the area named in the product's name because either some of the ingredients can or are actually sourced in the region or is actually aware of the fact the ingredients from outside the region can be used.

In the case of the Lübecker Marzipan, consumers do not expect that the key ingredient, namely almonds, is sourced in or around Lübeck.

The Nürnberger Lebkuchen is another interesting case in that the product name does not refer to an agricultural (or close to agricultural) product but a product which is clearly a "manufactured" product as is the Lübecker Marzipan. In these two cases, consumers may not necessarily assume that the ingredients are from the region.

In most of the other cases cited above (Spreewälder Gurken, Bresaola della Valtellina, Speck dell'Alto Adige, Mortadella Bologna, Zampone di Modena, Cotechino di Modena, Schwarzwaldforelle, Schwarzwälder Schinken and Ammerländer Schinken), the PGI could be interpreted by consumers as suggesting that the raw materials all come from the region as the product is much closer to the agricultural stage of production than the more "manufactured" products cited above.

Interestingly, however, the Federation of German Consumer Association (VZBZ) seems to be of a different opinion as they do not view the PGI Spreewälder Gurken as problematic while the Nürnberger Lebkuchen PGI is judged to be misleading for consumers.

**What are the advantages and disadvantages of identifying the origin of raw materials in cases where they come from somewhere else than the location of the geographical indication?**

Green Paper Stakeholders say:

As a general trend, all sectors, except processing organisations, are in a large majority **in favour** to the identification of origin of raw materials. Consumers' organisations had a favourable response for identification of raw materials for PGI processed products.

**Advantages** mentioned are:

- Better consumer information and awareness.
- Transparency criteria and traceability.
- Useful only for main ingredients linked with opinions on identification depending on the % of raw materials used (ceiling) suggested by farming org., consumers, think tank.
- Additionally individual respondent pointed out the importance to identify the terms 'bassin de production' and 'ancrage territorial' mentioning practices of raw material sourcing wider than defined GI area.

Some respondents suggested to make labelling voluntary. Some farming organisations and consumers underlined that **only EU/nonEU** identification should be used, backed individually by regional authority and think tanks

The processing organisations are in a large majority **against** identifying the origin of raw material. Among the other sectors a minority (sometimes large) expressed disagreement.

Main **disadvantages** were:

- Confusion of consumers: a few suggest as disadvantage that consumers could have a negative reaction to products with geographical origin and raw material identification coming from another area (farming organisations, consumers, think tanks).
- Excess of information on the label, and limited space (authorities, retail sector and academic/think tanks).
- No benefit for the "quality concept".
- Difficulty to source raw material from GI area (authorities, farming organisations, trade)
- Increase of costs is mentioned by a number of contributions (authorities, consumers, think tanks) with retail thinking that higher costs will be a result of changes in packaging as the source of raw material change or because of restrictions on source as a result of identification.

### **Extent of the problem**

The bottom line is that the non-information on raw material origin used in PGI may, in some cases, be a source of confusion for consumers.

However, unless comprehensive market research studies are undertaken before the registration of a PGI (in which consumers' views on their perceptions of the characteristics of the PGI, including raw material origin, are sought), it will be next to impossible to determine whether non-information on the origin of the raw material used in the PGI may mislead consumers.



A case-by-case approach to carrying out this work, before the registration of every PGI, may take into account that such consumer surveys could be very costly and time-consuming to undertake.

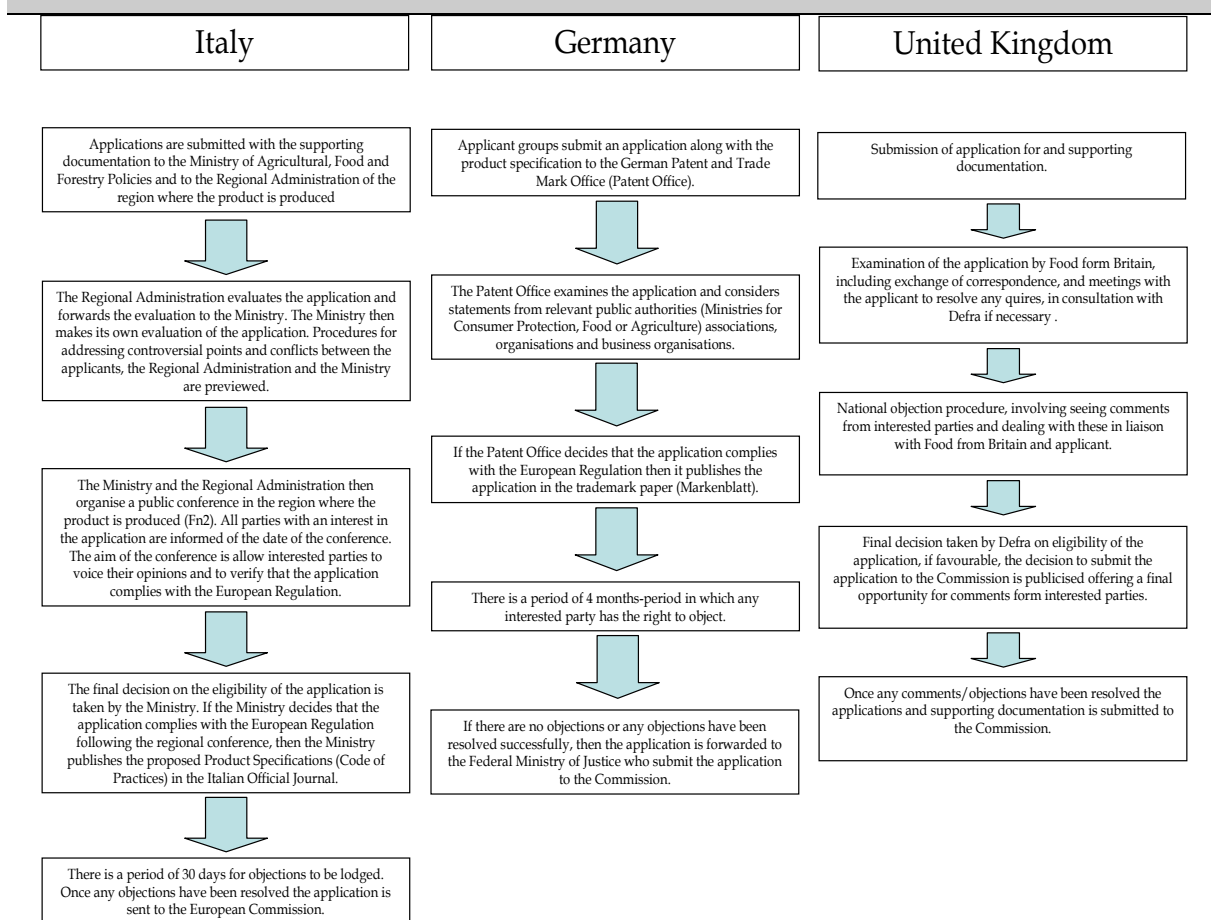
Moreover, as traceability and sourcing of food ingredients becomes an increasingly important subject for consumers, the issue of non-information on raw material origin used in PGI products may become more important in the future.

Long procedures at national level as well as EU level.

Domestic procedures for registering a name as PDO or PGI involve a number of steps for which length can vary between Member States (see box below with the examples of Italy, Germany and the United Kingdom):

- Submit application to relevant national institution;
- One or more examinations at national level;
- Objection period following publication of application;
- Submission of the application by relevant national authorities to the European Commission.

**Box 8 National PDO/PGI registration processes in Italy, Germany and the United Kingdom<sup>71</sup>**



As an example we can mention the timescale of objection, Regulation (EC) No 510/2006 only specifies that a reasonable period should be provided to allow for any potential opposition, but there is no clear guidance on what constitutes a reasonable period. As a result there is great disparity in the time period provided by MS for initial objections following publication of the application. It ranges from one month (Belgium, Bulgaria, Cyprus, Finland, Italy, Lithuania, Portugal and Slovenia) to five months in the Czech Republic.

So, the whole process of preparing the application, examining it, publishing for objection and solving the objections if any, and transmission to the Commission vary between the Member States and can take in some cases several years. This diversity may be higher if we take into account national procedures for adoption of protected names in wine and spirits.

Concerning the EU, **implementation of the three regulations on protection of geographical indications** (Council Regulation (EC) No 510/2006 on the protection of

<sup>71</sup> Following research conducted on the "Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI)". The study has been carried out by London economics in association with ADAS and Ecologic. The conclusions, recommendations, and opinions presented in the report reflect the opinion of the consultant and do not necessarily reflect the opinion of the Commission.

geographical indications and designations of origin for agricultural products and foodstuffs, Council Regulation (EC) No 479/2008 on the common organisation of the market in wine and Regulation (EC) No 110/2008 of the European Parliament and the Council on the definition description, presentation, labelling and the protection of geographical indications of spirits drinks), present strong convergence on basis principles (see table 5 below) but also remarkable differences.

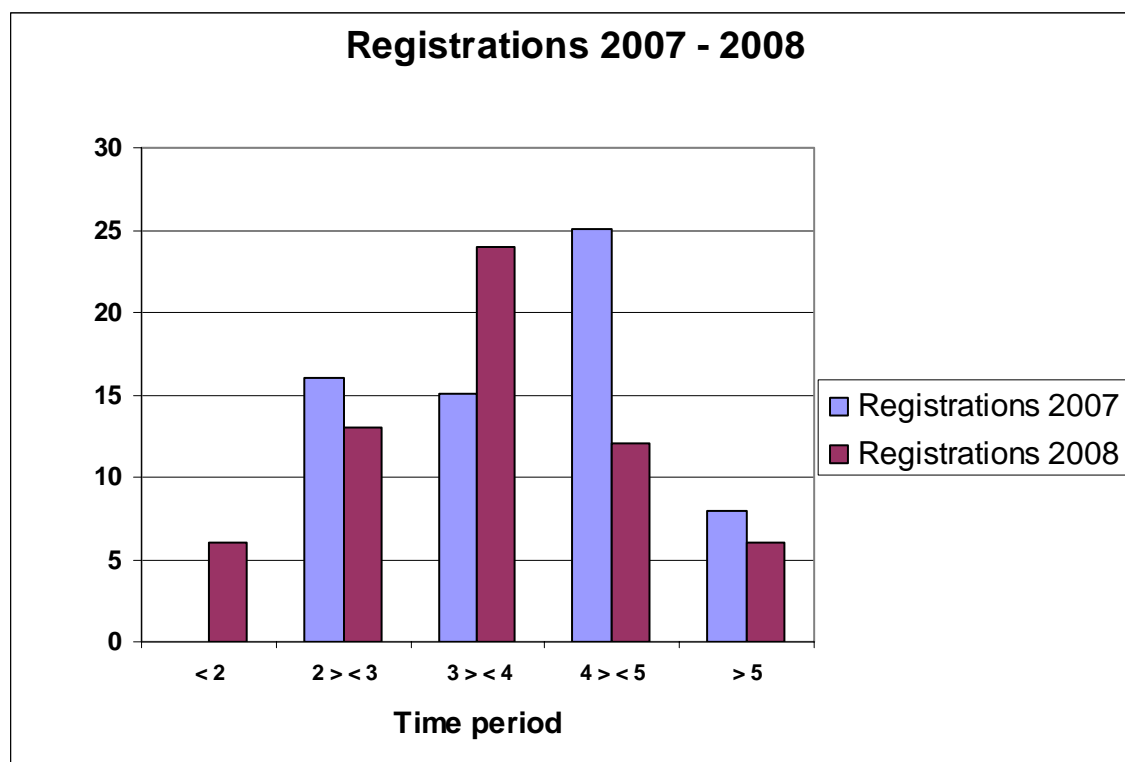
**Table 5: Similarities and differences between Regulations (EC) No 510/2008, (EC) No 479/2008 and (EC) No 110/2008**

|  | Agricultural products and foodstuffs                    | Wine            | Spirits                                   |
|--|---|-----------------|---|
| <b><u>Similarities</u></b>   |   |                 |   |
| Definition of geographical indication  | Yes   | Yes             | Yes                                       |
| Definition of designation of origin  | Yes   | Yes             | No  |
| Scope of protection  | Yes   | Yes             | Yes                                       |
| Administrative enforcement of protection   | Yes   | Yes             | Yes                                       |
| Relationship with trademarks (although an inconsistency in effective dates of protection persists in Regulations (EC) No 510/2006 and (EC) No 110/2008). | Yes   | Yes             | Yes                                       |
| Rules on coexistence with homonymous names   | Yes   | Yes             | Yes                                       |
| Creation of a register   | Register maintained at Commission premises in Brussels. | Electronic.     | Annex III of regulation for spirit drinks |
| Availability of specification (website).   | Yes   | Yes             | Yes                                       |
| Existence of a two steps registration procedure, an objection procedure, and a (s) cancellation procedure  | Yes   | Yes             | Yes                                       |
| Maximum delay for examination  | 12 months   | No delay        | 12 months                                 |
| <b><u>Differences</u></b>  |   |                 |   |
| Objection  | 6 months  | 2 months        | 6 months                                  |
| Appropriate consultations after objection  | Yes, 6 months   | No              | No  |
| Coexistence of national and EU protection system   | No  | Yes             | Yes                                       |
| Harmonisation of national procedure prior to submission  | Yes   | Yes             | No  |
| Comitology   | Yes, regulatory   | Yes, regulatory | Yes, regulatory under EP scrutiny         |

Due to the recent adoption of regulations on wine and spirits, no data on the length of procedures at EU level for applications is available. As regards agricultural products, already 825 names have been registered and around 300 are under scrutiny. The length of the procedure for a non problematic application (this without any objection) currently varies

between 2 years and 4 years, depending inter alia on the quality of the initial application. For 85% of applications registered in 2008 length was less than 4 years, while in 2007 it applied only to 50%.

Graph 1: Length of the EU procedure for applications to Regulation (EC) No 510/2006



Producers groups complain regularly about the length of procedures both at national level and at EU level. In a 2007 Survey made by the Commission to all the producer groups, the issue of long procedures was raised by producers groups from Portugal, France, Germany and Italy. Excessive bureaucracy is also mentioned by several Greek and Portuguese producer groups.

The effects of the length of procedure at EU level are limited by the possibility to grant national protection during the procedure, as well as priority vis-à-vis any trademark application.

Opinion<sup>72</sup> of the European Economic and Social Committee on geographical indications and designations (own initiative), issued in March 2008, issued some recommendations on the efficiency of PDO/PGI schemes, that include the need to have clearer and simpler application procedures.

During the Evaluation of the PDO/PGI regulation (only applying to Regulation (EC) No 510/2006 on agricultural products and foodstuffs), the review of the implementation of the PDO/PGI scheme has not provided evidence to suggest that the PDO/PGI regulatory

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<sup>72</sup> Opinion of the European Economic and Social Committee on Geographical indications and designations (Own-initiative opinion) NAT 372, Brussels, 12 March 2008.

framework and objection procedure is unclear *per se*, but the implementation of the regulation at Member State level varies across the EU.

In fact, there is significant diversity in terms of the institution responsible for promotion and administration, the level of support and guidance available for the application process, the time period allowed for objections at national level and the control of compliance and enforcement.

The evidence from the review of the implementation of the scheme, done under the Evaluation of PDO/PGI schemes, suggests the following issues would merit further consideration:

- *Availability of data at the Member State level*: the lack of comprehensive data on the number of PDO and PGI producers, the size of the agricultural land devoted to PDO/PGI production, the value and volume of production and the value of sales is a serious constraint to the monitoring and evaluation of the scheme at national and EU level.
- *Active promotion of the scheme and support for the applicant*: where national or regional institutions with a remit to promote the agri-food sector are involved, the level of support tends to be higher than when other bodies e.g. those responsible for intellectual property rights, are used. A secondary issue which can affect support is the resource available to the national body and the cultural attitude to regional quality food.
- *Control of compliance not harmonised*: there are important differences among the bodies responsible for certification and the degree of involvement by public and regional authorities.

### **Extent of the problem**

There is significant diversity in terms of time period allowed for objections and other steps of the procedure at national level. Diversity increases if we consider the three systems of registration of geographical indications applying to agricultural products and foodstuffs, wine and spirits.

The extent to which this is a problem may be limited but, to guarantee a level playing field among producers of PDO and PGI products across the EU, there may be a need for a minimum harmonisation of the national and European application procedure.

### **Weak and unclear protection of intellectual property rights outside the EU**

The TRIPS agreement provides for minimum standards of GI protection and the EC strives to enhance the protection of EU GIs in third countries via bilateral agreements. TRIPS provides a strong protection (under Article 23) to wines and spirits independent from any condition that the use of the name would mislead the consumer as to the true origin of the good. The use of the GI name is prohibited even in translation, or where the true origin of the good is indicated or even if it is accompanied by expressions such as "kind", "type", "style" or "imitation". TRIPS provides also protection (under Article 22(3)) to agricultural products and other goods, but only prevents the use of the indication to the extent that such use would mislead the public as to the geographical origin of the good.

Multilateral negotiations to ensure higher protection also to agricultural products and other goods are going on in Doha Development Agenda. Negotiation concerns also the establishment of a register designed to facilitate the protection of geographical indications for wines and spirits. Protection of EU agricultural GIs (for non wines and spirits) through bilateral agreements is a recent phenomenon.

Negotiations on an Anti-Counterfeiting Trade Agreement (ACTA) were launched in 2007 with several countries<sup>73</sup>. Those negotiations are still going on and there is no agreed text at this stage. Areas for possible provisions include: legal framework (border measures, civil enforcement, criminal enforcement, internet, distribution and information technology), international cooperation and enforcement practices. In that context, the scope of intellectual property rights to be covered by the agreement is still debated. While some countries call for this scope to be limited to copyright and trademarks, the EC is in favour of a broad scope, covering all intellectual property rights, including GIs.

Some EU geographical indications face usurpations and misuses in some Third countries. This may result in problems concerning:

- Access to those markets, when intellectual property rights are already granted to that name by a trademark for example.
- Cost for fighting against the appropriation or illegitimate use of the name by third parties (courts cases).
- Loss of potential market shares in those countries when the name is considered generic.

**Stakeholders have identified problems** they face when exporting products bearing geographical names protected as PDO and PGI in the European Union. There is a general concern of the lack of extended protection of GI in third countries, mainly expressed by farming organisations and some Member States. Dairy Australia mentions that international trademark and fair trading regimes provide enough protection for brands.

Problems are:

1. The first set of problems concerns the **protection provided by TRIPS**. It is mentioned that provisions aiming to protect GI names seem to be insufficient or are ill-implemented in some third countries. When existing, provisions can take the form of trademark law, *sui generis* law or case law and operators need to use one of these systems to ensure protection (CNIV). It was nevertheless recalled that the trademark instrument could be useful to grant protection during the negotiation of the binding register (Qualifica PT, Asociación española de denominaciones de origen).

Stakeholders underline difficulties to enforce the protection to be provided by TRIPS, mainly because it is complex to prove the GI "status", either before local courts or enforcement body. Main difficulties appear in countries with little case law on the issue of intellectual property rights linked to GI's

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<sup>73</sup> The goal of the ACTA negotiations is to provide an international framework that improves the enforcement of intellectual property right (IPR) laws. It does not purport to create new intellectual property rights, but to create improved international standards as to how to act against large-scale infringements of IPR. See The Anti-Counterfeiting Trade Agreement (ACTA), *Fact sheet revised January 2009*: [http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\\_142039.pdf](http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142039.pdf)

In addition infringements of GI rights are also difficult to prove. Obstacles are:

- Difficulty to identify the infringer, to provide evidence of infringement and to get local police or administration to act. As to the case law, difficulties are raised as to under trained judges, little case-law, unclear procedural law and low level of sanctions.
- Strong economic burden to sue third parties in third country courts.

The proofs to be provided by the owners of GI rights. Nevertheless, there are less difficulties if the GI at stake is already registered or protected in that country.

Major problem is also the low level of protection provided by TRIPS (especially for products other than wine and spirits), and that the protection is reduced by the scope of exceptions enshrined in Article 24. Infringements often refer to those exceptions to the protection of a GI under TRIPS agreement. For example it has been mentioned use of comparative indications such as Stilton style.

2. The second set of problems is the relation to **trademarks**. Some operators may for example face difficulties due to the registration of a trademark (often by competitors) in the third country market, which may prevent the GI from being protected or even used in that market. This is due to the fact that some third countries apply "first in time first in right" principle.

3. The third set of problems refers to the **generic** use of the protected name or its translation (mentioned by several respondents, such as ORIGIN and Wine and spirits trade association from UK). It was also mentioned that lack of protection in third countries increases the risk that names become generic.

4. Problems related to **counterfeiting** have been often mentioned. This problem has to be considered also under health protection perspective, as it was mentioned by spirit sector. It seems to be relevant to SMEs that dispose of weak resources to ensure protection.

5. Finally it was mentioned that the European Union does not sufficiently **enforce bilateral agreements**, (HU, Istituto di diritto agrario).

Argentina mentioned that many EU Geographical indications are presently generic terms in third countries, as results of European immigration. It was also mentioned that the main problem for EU GI's is that they are not competitive;

Some respondents, mainly from Italy (as well as CIAA and ATLA-FR), have also mentioned misuse or deceptive presentation of place of origin of the product, as to European Member states.

Beside the intellectual property problems, stakeholders have also pointed out the lack of understanding of the "GI concept"

Some stakeholders, mainly from France, were also surprised by the fact that EU regulations on GI's is open to third countries and no reciprocity is guaranteed in majority of third countries.

It is useful to consider the relationship between domestic action and the international protection of GIs. By adopting one of the different legal means, a country is signalling where

it would locate itself in the wider debate concerning international protection of GIs. Thus, the wider international ramifications of policy choice of domestic regime should be considered.

**Extent of the problem:** In order to fully develop the potential of the GI-system in third country markets, the objectives of current Regulations are insufficiently realised.

### **Overall conclusion on the problem definition**

The core problem can be identified in a partial legislation that does not cover all the aspects the policy intends to address.

Moreover, other problems of essentially a technical nature have also been identified, including:

- uncertain impacts on rural economy and environmental sustainability;
- inadequate returns for the farmer and producer participating in a scheme;

These problems raise the question on the objectives, that are presently not fully defined and not hierarchised;

- inclusion of unjustified restrictions on the single market in product specifications;
- divergent application of controls

Resulting from the legislation being implemented in a diverse way, both with regard to application procedures and enforcement of the intellectual protection.

- confusion in the extent of intellectual property protection provided under the legislation, including conditions under which a name can be used as an advertised ingredient in another product and criteria to assess the generic status of a name;

Finally, protected geographical indications and protected designations of origin have encountered problems on the visibility of the scheme. The European symbol and the mentions, created to be used on the packaging of products bearing the registered names have not been used significantly. In addition only (% of European consumers is able to recognise or distinguish the European symbols.

A schema on drivers and effects is presented in Annex II.

## **2.2. What are the underlying drivers of the problem?**

1. As **globalisation** spreads, European agricultural production faces a risk of homogenisation to respond to the growing competition in the market place. One visible effect is a threat to the diversity of local products. But in response, globalisation may raise opportunities as it gives increasing priority to traceability systems (Wilkinson, 2005)<sup>74</sup>.

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<sup>74</sup> Wilkinson, John (2005), Challenges and opportunities for GI markets (SINER-GI Parma, 21-22 June 2005): [http://www.origin-food.org/2005/upload/meetings/SIN\\_WILKINSON\\_lecture\\_Parma.pdf](http://www.origin-food.org/2005/upload/meetings/SIN_WILKINSON_lecture_Parma.pdf)



2. **Competition** is the main driving force behind any competitive market place, as it forces operators in the supply chain to react to changes in behaviour of the rest of the chain (Dries and Mancini, 2006).

Competition puts also strong pressure on the market for the maintenance of market share and for controlling the added value of the products. In that perspective it has to be mentioned that one of the most important development in the food supply chain in the past decades has been the shift of power away from producers and processors to retailers. To face competition, retailers implement practices to lower cost and increase efficiency:

Imposing standardisation that raises concerns about loss of products diversity and exclusion of smaller supply chains;

Concentrating bargaining power in the retail sector may also force upstream suppliers to produce and sell differentiated products. (Dries and Mancini, 2006).

These demands rising from the market, with the trends pushed forward by competition and globalisation, are resulting in a multiplication on the use and the creation of symbols to communicate features of products. Retail also adopts personalised "source of origin" marketing. This favors products where quality is clearly defined at the source and in terms of its specific process (Wilkinson, 2005). The geographical indications scheme is used in that context as a marketing strategy.

3. In parallel, the **demands of the market** are diverse and multiplying. Consumers in many parts of the world are demanding taste, tradition, origin and authenticity in their food, as shown in several studies undertaken by Siner-GI<sup>75</sup>. This increases potential for export for European PDO/PGI producers.

Following this trend, opportunities may also rise for value-added products, like geographical indications mainly in the market of 27 Member States, but also through exports to new markets.

New and evolving demands have also been rising lately from society. This applies in particular to concerns on the preservation of diverse local and traditional products and with the requirement that agricultural production preserves environmental resources (like water), landscapes and biodiversity. In general, it is assumed that besides the classic contribution to economic and social dynamic of rural areas agriculture has to play additional societal roles in preserving European territories.

4. Consumers' demands are also facing changes as an increasing number of consumers call for additional reliable **information on food relating to the origin**, other demand for differentiated products, i.e. origin products or products obtained following traditional methods, other ask for guarantees on the method of production or the provenance of the products. From the perspective of third countries, primacy of food safety encourages reconnection of product to conditions of production (traceability) but also imposes new minimum standards (HACCP, ISO) (Wilkinson, 2005). There is also an increasing interest from public authorities, consumers and retailers to provide more information on the products, beside the information on composition, like on health and nutritional value.

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<sup>75</sup> <http://www.origin-food.org/2005/base.php?cat=30>

### **2.3. Who is affected, in what ways and to what extent?**

- (a) Producers of agricultural products with a link with geographical origin is the main population concerned by the problem. They are concerned as they:
  - Invest in order to comply with the rules of the specifications (rules on production, labelling, conditioning and establishment in the defined area),
  - Sustain costs of control/certification before placing the product in the market (see Annex VI).
  - Are affected by the delay in the procedure to register the name (both at national and EU level).
  - As beneficiaries and right holders of the intellectual property rights linked to the geographical indication, they are concerned by any lack of enforcement of their rights.
- (b) Other operators for which the right of use of a name has been limited or denied are affected by long procedures of registration and legal uncertainty during the process.
- (c) Other operators of the chain like food industry (users of products bearing a geographical indication as ingredients), operators doing conditioning activities and retailers.
- (d) Consumers are concerned as they are the final users of the product bearing a PDO/PGI. Consumers are also concerned as to the information failure due to asymmetric information.
- (e) Rural population is also affected through the weak revenue of producers.
- (f) Member States since they:
  - sustain the burden of preparing and adopting the applications
  - ensure administrative enforcement of the protection for all the products present in their markets corresponding to the names protected.
  - ensure in some cases the control of compliance of specifications.
- (g) European Commission which sustains the administrative burden of examining applications and registering the names.

### **2.4. How would the problem evolve without a change in policy?**

The situation, without any new or additional EU intervention would evolve as follows:

#### **Economic aspects**

a. Producers. As added value and profit will not be equally distributed along the chain (see previous part 2.1.2.3), revenue of producers could weaken. Higher production costs for

PDO/PGI products may then not always be compensated by the premium price in the market. It is likely that producers will go out of the schemes.

The long delays in the application procedure (both on national and EU level) will continue to discourage certain producer groups from making applications, and weaken property rights associated to the names.

Due to the weak protection of intellectual property rights in some third country markets for EU geographical indications, some producers under registered names will continue to experience a loss of market opportunities in third countries.

b. Burden for Member States and for EU administration. There would be an increase in the number of applications submitted by Member States and third countries as well as in the number of registered names, for agricultural products/foodstuffs, wines, aromatised wines and spirits. Member States which recently became members have an arrear to make up and (producer groups of) third countries have shown an interest in the system (China, India, Thailand) which will lead to individual applications from producer groups. It is expected to have 400 more names registered as PDO/PGI by 2012.

In addition, under the recently adopted Regulations (EC) No 479/2008, protected wine geographical indications and designations of origin shall submit a technical application in order to confirm the protection. New wine names will also be subject to the submission of a technical file.

Under recently adopted Regulation (EC) No 110/2008 on spirit drinks, majority of 325 protected names mentioned in annex III of the regulation will likely submit a technical application in order to confirm the protection.

The number of names to be protected under bilateral agreements (negotiations currently going on with Georgia, Ukraine, Korea, Switzerland, etc.) may also increase the list of GIs to protect in the EU;

#### c. Simplification

Alongside the increasing number of applications, the existence of three legal frameworks and three registers will lead to confusion for users, producers, consumer and third country partners. In addition, the management of four different systems (with aromatised wines) may multiply administrative burden for EU and national administrations, and lead to development of specific rules; It will also increase risk of inconsistency between the existing legislations.

#### d. Intellectual property rights

The different level of enforcement and control on the specifications in Member States and third countries could undermine the credibility of the GI-systems. This would lead in turn to a loss of confidence among producers, consumers and operators.

Intellectual property rights may also be a threat if no clarifications are added to some aspects of the relations with other uses of names, generic character, etc.

Increase of activities reserved to the operators located in the limited area will increase the risks of creating barriers to the free movement of goods and freedom to provide services in the single market.

### **Social aspects**

Growing international competition will lead to further disappearance of products typical for certain regions, which will result in less diversification on the market.

As to consumers, in case of some products referring to a PGI, consumers may continue to be confused when origin of the raw materials is not from the area.

From the 1st of May 2009 it will become obligatory for agricultural products and foodstuffs originating in the Community marketed under a registered name, to use on the labelling the indications 'protected designation of origin' and 'protected geographical indication' or the Community symbols associated with them. As mentioned above, the evaluation study showed that only 8% of shoppers in 2008 recognise the PDO or PGI symbol. Only about half of them was able to identify that the symbols mean the product is produced in one specific area. In case of a no policy change, consumers may remain confused because of a lack of information on the schemes and the symbols.

### **Environmental aspects;**

As there is no specific requirement as to protection of environment in PDO/PGI schemes, it is difficult to assess the impact on environmental resources if no change in policy is addressed. With current policy overall environmental impacts would depend on the impact of each PDO/PGI scheme which is difficult to assess.

## **2.5. Does the EU have the right to act?**

Production and trade of agricultural products and foodstuffs on the internal market and ensuring the integrity of the internal market are matters of Community competence. Both are European Union shared competences with Member States<sup>76</sup>. Article 37 of the Treaty is the legal basis of the GI Regulations.

## **B.3. OBJECTIVES**

### **3.1. General objective**

The Community's general objectives in relation to Geographical Indications scheme can be linked to the basic objectives of the CAP set out in the Treaty, as shaped by successive reforms. In the Communication for 2003 CAP Reform, the CAP was identified as aiming to achieve, among other goals:

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<sup>76</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community inserts a new Article 118 in the FEU Treaty: "In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure establish measures for the creation of European intellectual property rights to provide uniform protection of IPR through the Union and of setting up of centralised Union-wide authorisation, coordination and supervision arrangements".

- a competitive agricultural sector,
- a fair standard of living and income stability for the agricultural community.

Council Decision 2006/144/EC on Community strategic guidelines for rural development (programming period 2007 to 2013) adds on reference to the consumer aspect of competitiveness. It identifies as first rural development Community priority the following: “improving the competitiveness of the agricultural and forestry sector”. The concerned strategic guideline states: “Europe’s agricultural, forestry and food-processing sectors have great potential to further develop quality and value-added products that meet the diverse and growing demand of Europe’s consumers and world markets”.

As stated in the Decision, the Community strategic guidelines identify the areas important for the realisation of Community priorities, in particular in relation to the Göteborg sustainability goals and to the renewed Lisbon strategy for growth and jobs.

Changes introduced by the Health Check of the CAP Reform also reflect a clear concern for market-responsiveness. In order to live up to increasing competition on our own markets as well as global markets, EU agriculture has to play its strengths: emphasising quality of different kinds, including that linked to geographical origin.

In 2005 the European Commission presented a Communication on Simplification and Better Regulation for the Common Agricultural Policy. Reducing red tape in the farm sector by making rules easier to understand and less burdensome reduces costs for businesses and ensure that European citizens receive value for money.

The above general objectives are of direct relevance to the EU quality scheme (GIs) identifying products with specific qualities linked to geographical origin, as indicated in the recitals of Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin of agricultural products and foodstuffs.

### **3.2. Specific objectives**

- (a) Provide clearer information regarding the products specific characteristics linked to geographical origin, enabling consumers making more informed purchase choices.

Indicator: degree of consumers' satisfaction and degree of knowledge of Community symbols.

- (b) Provide a single approach at EU level for a system of protection of names for products with specific qualities linked to geographical origin.
- (c) Ensure uniform enforcement - throughout the EU - of the intellectual property rights stemming from the registration of product names both of the EU. .

Indicator: degree of producers' satisfaction with IPR enforcement

- (d) Improve incomes of farmers and ensure that the system contributes to rural economy.

Indicator: added value distributed in the chain and employment linked to the use of PDO/PGI.

- (e) Simplification of the Community schemes on geographical indications.

Indicator: Number of GI systems. Degree of operators' satisfaction with reduction of administrative burden related to registration and enforcement procedures.

(f) Facilitate high level protection in third countries of EU geographical indications.

Indicator: Number of bilateral agreements ensuring protection of GI's; Outcome of DDA negotiations on the "extension" and "multilateral register" issues. Administrative cooperation to contribute to a better protection for GIs under third country systems.

### 3.3. Operational objective

Not needed.

## B.4. POLICY OPTIONS

### 4.1. Option O: no change in present EU action – Status quo

This option is treated as the baseline option, in part 5, willing to assess the impacts of the different option as well as in part 6, willing to compare the options. See description on baseline scenario section 2.4.

### 4.2. Option A: Protection through trademark system.

#### 4.2.1. Basic approaches

Traditionally, intellectual property can be divided into two main categories: industrial property and copyright. Both geographical indications and trademarks are industrial property rights. They have in common that they enable holders to prevent unauthorised use of an intangible asset of potential commercial value, i.e. the indication to the consumer of origin.

This option is very similar to Option H "no EU action at Community level". Nevertheless, the difference is that no national system for the protection of geographical indications could be created. Level of protection would be the one ensured by TRIPS, but the legal means to apply it (protect names) would only apply through the Community trademark system (Council Regulation (EC) No 40/94 on the Community trademark<sup>77</sup>).

Trademark protection could be provided through the Community collective mark<sup>78</sup>. Nevertheless, a Community collective mark does not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.

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<sup>77</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (O L 11, 14.1.1994, p 1).

<sup>78</sup> Under Art. 64(1) a Community collective mark is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings. Associations of manufacturers, producers, suppliers of services, or traders which, under the terms of the law governing them, have the capacity in their own name to have rights and obligations of all kinds, to make contracts or accomplish other legal acts and to sue and be sued, as well as legal persons governed by public law, may apply for Community collective marks.

Another option could be to develop a Community certification mark. Generally speaking the main difference between collective and certification marks is that the former may be used only by particular enterprises, for example, members of the association which owns the collective mark, while the latter may be used by anybody who complies with the defined standards. Thus, the users of a collective mark form a "club" while, in respect of certification mark, an "open shop" principle applies.

As a consequence of that option, the definition of designation of origin will disappear in the EU legislation, as same definition of geographical indications will apply to every Member State (TRIPS definition of geographical indication).

This option has been cited as preferred by a minority of Member States. The EESC (European Economic and Social Committee) feels that the use of trademarks to protect GIs outside the EU is certainly a feasible idea; however, it would not solve the problem of international protection for designations as it would be complex (given the number of countries potentially concerned) and costly (i.e. feasible only for large commercial organisations with sufficient financial resources) while failing to provide full protection.

***Stakeholders said (Green Paper):***

***Should the use of alternative instruments, such as trademark protection, be more actively encouraged?***

A majority of respondents stated that geographical indications and trademarks are not alternatives but two systems distinct in nature that should co-exist.

Some stated both systems can be complementary. Several farming organisations indicated that collective trademarks can be interesting to use in the case of international trade in certain third countries. Collective trademarks can be an alternative to geographical indications for certain typical local productions linked to an area having a limited economical impact.

Few processing organisations within the dairy sector, asked to encourage the use of collective trademarks not linked to PDO/PGI.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, consumers and producers expressed against that option that would undermine current GI system.

**Table 6: Comparison of the GI and Trademark/Collective/Certification marks systems<sup>79</sup>**

|   | GEOGRAPHICAL INDICATIONS (GIs)   | COLLECTIVE TRADEMARKS   |  |
|---|--|---|--|
|   |  | COLLECTIVE TRADEMARK <i>STRICTO SENSU</i>   | CERTIFICATION TRADEMARK*   |
| <b>Legal basis</b>  | R (EC) No 510/2006<br>R (EC) No 479/2008<br>R (EC) No 110/2008   | Regulation. (EC) No 40/94 on Community trademark lays down rules on the Community collective mark   | - MS National laws.<br><br>- Directive 2008/95/EC (harmonisation national laws) mentions MS certification marks, without providing a definition. |
| <b>Nature</b>   | Collective right   | Collective right  | Collective right   |
| <b>Objective</b>  | Designed to identify the geographical origin and its links with the quality, characteristics or reputation of a product.   | Designed to distinguish the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings. | Designed to certify quality, characteristics, origin, materials, etc.  |
| <b>Link between the product and the geographical origin</b> | Essential. Link cannot be broken<br><br>- PDO: quality essentially due to geographical origin<br><br>- PGI: quality, reputation or other characteristic<br><br>- prevent relocation/delocalisation of production | Merely possible.<br><br>Link with the geographical origin is not a <i>sine qua non</i> condition (it can be)  | Merely possible (=>“GI without the soul”)<br><br>Link with the geographical origin is not a <i>sine qua non</i> condition (it can be)            |

<sup>79</sup>

Compiled on the basis of multiple sources, including *inter alia*: Addor and Grazioli, "Geographical Indications beyond Wines and spirits. A roadmap for a better protection to Geographical Indications in the WTO TRIPS Agreement", *The Journal of World Intellectual Property*, (2002), Vol. 5 No 6, available at: <http://www.ige.ch/e/jurinfo/documents/PDF-doku3.pdf>; Lucatelli et al., "Appellations of Origin and Geographical Indications in OECD Member Countries: Economic and legal Implications, Committee for Agriculture", OECD, 2000; Rangnekar, "The international protection of geographical indications: The Asian experience, UNCTAD/ICTSD Dialogue, Intellectual Property Rights, Innovation and Sustainable development, Hong Kong.



|                               |   |  |   |
|-------------------------------|---|--|---|
| <b>Owner/right holder</b>     | <ul style="list-style-type: none"> <li>- not explicitly identified in EC regulations</li> <li>- complex and controversial in legal literature. Some commentators: difference between holder of the right “over” the appellation and “to” the appellation.</li> <li>- conferred to all producers of the area complying with specification, not necessary to be part of a collective group</li> </ul> | <p>Collective ownership , public or private</p> <p>Owned by the collective body which exclusively grants its members the right to use it</p>   | <p>Collective ownership, public or private</p> <p>Owned by a certification authority</p>  |
| <b>Usa</b>                    | Any person respecting the specification requirements. No need to belong to association  | Any person who has authority to use under the regulation governing its use.  | "Anti use by owner rule". Owner cannot use it. Any person respecting standards laid down in the regulation can use it.  |
| <b>Licensing</b>              | Cannot be licensed  | Possible   | Possible  |
| <b>Transferability</b>        | Ownership cannot be transferred or assigned   | Possible   | Depending on national law   |
| <b>Duration of protection</b> | - Indefinite protection   | subject to periodical renewal<br>10 years  | subject to periodical renewal<br>10 years   |
| <b>Registration costs</b>     | - depending on national law   | €1050 paper filling (under proposal of the Commission to be adopted in March2009). Reduction of €150 if electronic filling.  | Depending on national laws  |
| <b>Certification/Control</b>  | National competent authorities/control bodies   | Voluntary  | Owner   |
| <b>Scope of Protection</b>    | Very broad<br>"Absolute" protection   | <ul style="list-style-type: none"> <li>- Does not prevent other producers from registering similar signs, providing that they do not result in a likelihood of confusion</li> <li>- “First in time, first in right” applies: who uses the CTM first gets the protection to the exclusion of all others.</li> </ul> | <ul style="list-style-type: none"> <li>- Does not prevent other producers from registering similar signs, providing that they do not result in likelihood of confusion</li> <li>“First in time, first in right” applies: who uses the CTM first gets the protection to the exclusion of all others</li> </ul> |

|  |  |  |  |
|--|--|--|--|
| <b>Enforcement/Means of protection</b> | Mix of public ( <i>ex officio</i> ) and private action | Only private action                        | Only private action                        |
| <b>Genericity/genericness defence</b>  | Can never become generic once registered               | Registration does not prevent "genericide" | Registration does not prevent "genericide" |

\* As regards certification marks, conditions for protection and its duration and costs involved in registration and protection are provided in national legislation and so vary from country to country. Moreover, different mechanisms do not necessarily apply on exclusive basis. Cumulative application is common.

#### 4.2.2. Screening for technical and other constraints

Repealing of EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006, the pertinent provisions in wine Regulation (EC) No 479/2008 and their implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (decisions will probably intervene under co-decision procedure).

Possible modification of Council Regulation (EC) No 40/94 on the Community trademark to lay down specific rules on a Community certification mark.

Diversity between national systems would decrease as definition, protection and instruments will be similar in every MS.

As for geographical indications, trade mark registration in the Community has been harmonised in Member States for more than 15 years and Community trade mark rights co-existing for over 10 years.

Level of protection in trademark law is lower than present level of protection (see below).

Besides this, different level of protection would apply to wines and spirits comparing to that granted to agricultural product and foodstuffs. The trademark system will be registering around 4000 names.

In addition there is a probability for some local products that are not produced in significant quantities or are not exported will not endorse that option.

#### 4.2.3. Assessment of effectiveness, efficiency and consistency

Low efficiency as to the harmonised approach, as different level of protection for wines and spirits comparing to that granted to agricultural product and foodstuffs. Efficiency would be higher to "mature GIs" and low for "small GIs".

Same effectiveness as to the *sui generis* GI approach in the EU: definition, protection and instrument would be similar to every MS. High effectiveness as to administrative burden as the Office for the Harmonisation in the Internal Market will examine the applications received directly from applicants.

Low effectiveness in the protection of names as:

- The level of protection would be lower than the present EU protection. The principal distinction in terms of the scope of legal rights is that certification or collective marks are subject to the same rules as other marks, usually with the exception of

rules relating to non-use. Whereas GIs are not subject to such exceptions as genericness or use in good faith, certification and collective marks are.

- The trademark regime usually does not prevent other producers from registering similar signs, providing that they do not result in a likelihood of confusion. In general, the protection provided by the *sui generis* GI system is broader in scope, protecting registered names against imitation or evocation, even if the true origin of the product is clear.
- While in a GIs system the producer group seeking the registration is required to demonstrate the existence of a special link between the characteristics of the product and its geographical origin, these conditions usually do not apply for registration of a certification mark which is based on the intention of the group and which is free to define the rules for users in line with characteristics it chooses. This does not exclude the possibility that the owner includes, should he so wish, the existence of a special link between the characteristics of the product and its geographical origin in the certification standards of the product.
- Enforcement would apply only through private action: GI producers, and/or MS would need to engage in private legal actions in every MS to ensure protection.

Inconsistency with other EU action on quality policy (under rural development and promotion).

Consistent with international obligations (TRIPS), but highly inconsistent with EC position in DDA. Inconsistent with EU position in bilateral negotiations taking place and inconsistency with signed bilateral agreements.

As far as the production method is concerned, a GI protection implies by its very nature that it is publicly available, since anyone who respects the specification is entitled to use the name. The production method of a trade marketed product may be secret or itself protected under a patent.

Transition between the current *sui generis* system (more than 800 GIs registered and around 2500 being registered) and a new system providing – or anyway generally perceived as providing - a weaker protection would be extremely complex. It could give rise to disputes with current GIs beneficiaries.

### **4.3. Option B: Simplification of current EU systems, including streamlining of procedures.**

#### *4.3.1. Basic approach*

This option would consist in a reduction of present delays in the procedure at community level:

- Examination period: reduce the current examination period of 12 months (agriculture products and spirits) to 3 months.
- As is presently foreseen in EU provisions, the result of the examination will be a straight decision from the Commission (either to reject or to register).

- Reduce the current objection periods of 6 months to 2 months.
- Reduce delays for appropriate consultations following objections from 6 months to 2 months.

It would also contribute reducing inconsistencies between the three systems of protection: wines, spirits and agricultural products as foodstuffs.

#### 4.3.2. *Technical constrains*

Modification of EU legislation through a Council decision will be needed for Regulation (EC) No 510/2006 and its implementing rules, and the pertinent provisions in wine Regulation (EC) No 479/2008 and implementing rules. It will also need a modification of spirits Regulation (EC) No 110/2008. These modifications will probably intervene under co-decision procedure.

#### 4.3.3. *Assessment of effectiveness, efficiency and consistency*

This option would be:

- Very effective as to shorten delays. Producer groups would rapidly know if the name is registered or rejected.
- Very efficient as would reduce administrative burden. The administrative practice of sending several letters to applicants through the Member States (for EU applications) would be reduced to one single letter if the application was not complying with the Regulations.
- Consistent with simplification strategy and with recent exercise to submit applications on line through online application system DOOR (Database of Origin and Registration).

### **Option B1: merging of the 2 definitions for geographical indications and designations or origin**

#### *Basic approaches*

This option would consist in merging the 2 definitions currently provided for in EU GI legislation: “protected designation of origin” and “protected geographical indication”. The European Community is member of World Trade Organisation, and bound to respect the Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS) The definition of geographical indication laid down in that agreement obliges to maintain that definition. So, in practical terms, this option would consist in deleting from EU regulations the definition of protected designation of origin. It is also worth noting that since the definition of "geographical indication" given in Article 22 of the TRIPS Agreement appeared in some respects broader than the definition laid down in Article 2(2)(b) of Regulation (EEC) No 2081/92 (now repealed), Regulation (EC) No 510/2006 also aimed at bringing those definitions closer together.

Some Member States are strongly against any change in the PDO and PGI definitions<sup>80</sup>. The EESC<sup>81</sup> believes that merging the symbols for PDOs and PGIs may risk creating an inequality between two concepts of equal worth, established and rooted in various geographical areas. In view of the need to make products more recognisable to consumers, greater graphical distinction between PDOs and PGIs (e.g. different colours) was also suggested.

#### *Screening for technical and other constraints*

Modification of EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006 and its implementing rules, and the pertinent provisions in wine Regulation (EC) No 479/2008 and implementing rules.

#### *Assessment of effectiveness, efficiency and consistency*

Although some stakeholders would prefer that option as it will simplify the legislation and the concept of GIs, other think it would be less effective as to information to provide to consumer (see EESC Opinion). Designation of origin responds to the practice developed in those Member States since the 60's to protect some very well known names. Already Regulation (EEC) No 2081/92, after acknowledging the successful results achieved by Member States whose legal systems already protected designations of origin (recital 6), mentioned the diversity existing in the field: there was diversity in the national practices for implementing registered designations of origin and geographical indications (recital 7).

Designation of origin corresponds to the reality of the Member States and the abolition in EU legislation of that definition will not stop those MS to use corresponding national mentions. According to the recital to Regulation (EC) No 510/2006, existing practices make it appropriate to define two different types of geographical description, namely protected geographical indications and protected designations of origin.

Protection does not extend to all names but only to ones which encompass a dual connection, both spatial and qualitative, between the product, on the one hand, and its appellation, on the other. The qualitative connection also serves to differentiate designations of origin from geographical indications, in that the link with a particular area is not as strong in the latter case. Some writers<sup>82</sup> are of the opinion that the distinction is one of degree only, rather than of substance. Furthermore, it has been observed that the PGI is not a light form of qualified indication of origin: registration procedures and protection granted are exactly the same<sup>83</sup>. Other commentators assert that the distinction is not clear<sup>84</sup>.

Although no specific studies have been made on the knowledge for the two definitions, in some MS the concept of designation of origin is widely spread and known for the consumer (due mainly to the use of that definition in wine sector) whilst the definition of geographical indication is relatively new.

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<sup>80</sup> Procès-verbal de la 72ème réunion du Comité permanent des indications géographiques et des appellations d'origine protégées des produits agricoles et des denrées alimentaires du 26 juin 2007.

<sup>81</sup> Opinion of the European Economic and Social Committee on Geographical Indications and Designations of origin (2008/C 204/14), (OJ C 204/57, 9.8.2008).

<sup>82</sup> See, for example, Sordelli, 'Indicazioni geografiche e denominazioni di origine nella disciplina comunitaria', *Diritto Industriale*, 1994, p. 837 et seq.

<sup>83</sup> Olszak, *Droit des appellations d'origine et indications de provenance*, 2001.

<sup>84</sup> O'Rourke, *European Food Law*, 2nd edition, Palladian law publishing, 2001.

This would cause confusion in the consumer as he/she will see on the market the Community definition of geographical indications, and several national mentions; each of them with a national symbol, of designation of origin. Effectiveness would thus be very low as regards the problems of communication and competition in the single market.

The option is **inconsistent with recent modifications** of legislation:

- A graphic differentiation between the Community symbols for PDO and PGI was introduced in 2008. Following this change, a red and yellow symbol identifies the Designation of Origin, clearly distinguishable from the blue and yellow symbol for Protected Geographical Indications. A recital to the concerned regulation reads as follows: "Whereas present the motivation to distinguish both PDO from PGI, in the light of experience gained since they were adopted and with the aim of promoting their use, it should be made easier for consumers to distinguish between protected designations of origin and protected geographical indications. Different colours should therefore be used for the symbols relating to the two different indications."
- Recent reform of market organisation of wine introduced the two definitions (Article 34 of Council Regulation (EC) No 479/2008).

The **option is consistent** with international engagement. It would also present advantages when negotiating bilateral agreements, as would present a simpler EU system.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, consumers and producers expressed against that option that would undermine current GI system. Consumer association defended present system, but asked for further differentiation between PDO and PGI, as well as improved information to consumer.

### **Option B.2: merging of the 3 existing registers: wine, spirits and agricultural products and foodstuffs.**

#### *Basic approaches*

The fusion of three registers (for wine, for spirits and for agricultural products and foodstuffs) and the inclusion of the system of aromatised wines should be considered under that option.

The fusion of the three registers could be accompanied by the drafting of a single Regulation, that would include present common grounds existing in the three regulations, as well as separate chapters containing specific provisions related to wine and other products.

The majority of Member States supports an harmonisation, while they agree that specificities for wine should be respected.

Green paper Stakeholders said:

An overwhelming majority of respondents is in favour of a gradual harmonisation and simplification of the 3 systems: agricultural products, wine and spirits but keeping their specificity. It was mentioned that common definitions (allow PDO for spirit), procedures (allow consultation in case of objections for wine and spirit), level of protection, use of quality symbols, monitoring, the differences among Member States should be harmonised and/or simplified.

This would also have positive effects on the level of protection as wine provisions could apply to other categories. Credibility in multilateral and bilateral negotiations was mentioned. Harmonisation will also rationalise and even reduce administrative costs, increase understanding of rules, better recognition and simplification of the information to provide to the consumer. Synergies as to promotion and communication programmes covering the three systems were mentioned.

Nevertheless stakeholders from wine and spirits sector, advocating for a more harmonised approach (for example on the registration procedure), prefer a separate development of the systems (farming organisations CCAE and from UK, CNAOC, CECRV, CEEV, Pernod Ricard, Scotch whisky, CNIV, Association cider and fruit wine, AREPO, ORIGIN) and even further simplification. Their main concerns are:

- Systems are already harmonised and the sectors should keep the specificities;
- Wine and spirit systems are new, time to adapt should be allowed.
- Difficult to implement and bigger administrative burden to create only one system.
- Avoid ending up with the lowest common denomination.

#### *Screening for technical and other constraints*

It would need repealing provisions concerning GIs in Regulation (EC) No 479/2008 on wine market organisation and implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (decisions will probably intervene under co-decision procedure). It would also need to repeal Regulation (EC) No 510/2006 and its implementing rules.

Adoption of a new Regulation would intervene under co-decision procedure.

#### *Assessment of effectiveness, efficiency and consistency*

High effectiveness, as consumer and stakeholders will better understand one single register including all the protected names.

Better effectiveness as synergies in examination and procedures would fully be in place.

This option would ensure consistency and coherence between the existing regulations on protection of geographical indications at EU level.

It would also make the EU legislation more transparent, as the same rules would apply to all the products. Nevertheless, a level of specificity for some sectors (wine, cheese, and other animal products) will be needed.

Full consistency with other EU agricultural policies and declared objectives on quality policy.

Fully in line with better regulation and simplification priorities of the Commission. This also includes the Action Programme on Reducing Administrative Burden, which has as an objective, endorsed by the Council, to reduce administrative burdens with 25% by 2012.

The option is consistent with international engagement. It would also present advantages when negotiating bilateral agreements, as would present a simpler EU system.

### **Option B.3: Create national systems to protect geographical names and subsequent reduction of number of registered names**

This is the preferred option by a minority of MS.

#### *4.3.4. Basic approaches*

In addition to previous option B the system would consider:

- Introduction of trade (volume and value) criteria as precondition for registration of names at EU level;
- Reduction of present list of registered names at EU level, to comply with the abovementioned economic/trade criteria.
- The possibility to create national systems to protect names in parallel to EU systems. Protection of those names would then only apply as to the national market.

#### *4.3.5. Screening for technical and other constraints*

Modification of the EU regulations to permit the creation of national systems to protect geographical names in parallel to EU systems.

Definition of trade criteria (volume and value) would be complex. It is worth remembering that GIs are not linked to the size of the market for the product.

Reduction of present number of names protected as PDO/PGI would be particularly difficult.

The laying down of national systems, however defined, should be compatible with TRIPS provisions as interpreted by the abovementioned Panel ruling.

#### *4.3.6. Assessment of effectiveness, efficiency and consistency*

National protection would fragment the territory of the Community and may thus adversely affect intra-Community trade.

Low effectiveness on providing clear information to consumer as national labels/logos would multiply.

Low effectiveness in providing a clear legal framework, and ensuring adequate intellectual property protection. Protection of GIs at national level is characterised by the existence of a variety of different legal concepts. These were developed in accordance with different legal traditions and within framework of specific historical and economic conditions. These differences have a direct bearing on important questions such as condition of protection, entitlement to use and scope of protection. Moreover, mechanisms do not necessarily apply on an exclusive basis. On the contrary, cumulative application of different means of protection is common.

In addition, low effectiveness in providing clear information to consumers as national labels/logos will multiply and in providing clear legal framework may be created.



Some MS are organised on a decentralised pattern (like Spain or Germany) and the geographical indications are logically included into federalism redistribution of competencies. Costs of procedures, duration of decision-making, and complexity of administration offices involved are various. National system of protection could prove to be better placed to assess the specificities of applications concerning small and local PDO/PGI productions<sup>85</sup>.

High coherence with the external policy of protection of PDO/PGI. Bilateral agreements would concentrate on protection of names with significant importance in trade.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, this option was defended by Italian representatives only. AREPO defends that option for international protection purposes. Nevertheless it recognised the need to be cautious with that option as:

- Some small GI presently do not have any export potential, but may develop in the future.
- Some products are exported but could be imported to the local areas, e.g. protected as trademarks and undermine the rights of the local GI right holders.
- Some local areas have tourist potential. EU symbols on PDO/PGI could serve to distinguish those local products.

Majority of respondents expressed innuendos, even if they considered that restricting criteria to the number of GIs would be useful.

#### **4.4. Option C: Clarifying PDO/PGI rules**

##### *4.4.1. Basic approaches*

This is the preferred option by the majority of Member States. It is in line with the Commission declaration on 30.3.2006 on the review of the GI policy. The system in place could be clarified and improved by taking into account the results of several consultations (conference, economic study, Evaluation, Green Paper, etc.).

The points already mentioned in the Commission declaration in 2006 should be subject of these improvements but other points could also be added.

This could be done through modification of the current Regulations and of implementing rules or by drafting guidelines.

Clarifications or improvements would be added in particular to:

- The use of PDO/PGI as ingredients in processed products.

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<sup>85</sup> In *Carl Kühne and Others*, the Court addressed the question of the division of powers between the Member States and the Commission during the registration procedure. The ECJ declared that the system of division of powers is attributable particularly to the fact that registration presupposes verification ‘that a certain number of conditions have been met, which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check’.

Several Member states called for guidelines to ensure the availability of clear information for consumers. The guidelines would also prevent the products under PGI and PDO from risk of undue exploitation for commercial purposes.

- Labelling of place of farming of raw materials used in a PDO and a PGI, when they refer to an agricultural products.
- The obligations for ensuring enforcement in
  - The market place.
  - Production stages
  - Transit and trade prior to retail sale.
- Clarification as far as possible of the rights of use of protected names, including in relation to other (potential) uses on non-originating product (trademarks, plant varieties and animal breeds, prior uses, etc.)"
- Coexistence with trademarks: the text of Article 14(2) of Regulation (EC) No 510/2006 should be widened to clarify coexistence also for trademarks applied for prior to the application for registration of the GI in the EU.
- Transitional periods.
- Legal clarification on the possibility to register GIs via bilateral agreements.

In stakeholders meeting **Quality Policy Advisory Group** on 26.2.2009, this option was mentioned as the most interesting. Some issues to be addressed were mentioned as criteria for generics and rules on the link of quality of the products with environmental quality, through the method of production.

#### 4.4.2. *Screening for technical and other constraints*

A legislative process is needed, proposition from the Commission, discussion and vote in the Council (co-decision would presumably apply by 2010)<sup>86</sup>.

Amendments to Regulation (EC) No 510/2006 and Regulation (EC) No 110/2008 should be compatible with relevant TRIPS provisions as interpreted by the aforementioned Panel ruling. In particular, attention should be paid to rules on the relation between GIs and trademarks.

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<sup>86</sup> On the first day of the month which follows the last ratification, the Treaty of Lisbon enters into force a new Article 118 concerning the adoption of measures for the creation of European intellectual property rights, will be introduced into the FEU Treaty. This raises the question whether legislation concerning GIs (and thus an amendment to PDO/PGI regulation) will in the future have to be based on that Article rather than on Article 43(2) FEU Treaty. Whilst acts under the new Article 118 would also have to be adopted in co-decision, the use of one or the other legal basis could, of course, have internal institutional consequences and also with regard to the width of powers which, at first sight, would seem to be wider under Article 43(2) than under Article 118.

#### 4.4.3. *Assessment of effectiveness, efficiency and consistency*

High effectiveness as to the implementation of rules, as further clarifications would be considered.

Nevertheless, there would be a risk that legislative framework becomes too detailed and difficult to understand.

Improved efficiency during the examination process for the Commission services as clarifications would have a direct impact on the quality of the application.

Full consistency with other EU agricultural policies and declared objectives on quality policy.

### **4.5. Option D: Management by an Agency**

#### 4.5.1. *Basic approach*

Set up of an executive agency to manage the applications, to register the names and to enforce the protection. The agency would be established in one of the Commission sites (Brussels or Luxembourg).

The possibility to give the management of a program on an existing agency shall be considered. In this context the management to the Office for the Harmonisation in the Internal Market (OHIM) or the "Community Plant Variety Office" (CPVO) should also be considered under that option.

The preferred option by the stakeholder organisation Origin (Organisation for an International Geographical Indications Network) is to create an Agency to enforce the protection. AREPO asks to study this option aiming to study the "subjects" related to GIs. COPA/COGECA introduced also the idea that the Agency would have also tasks concerning the surveillance and enforcement of intellectual property rights linked of protected geographical indications and protected designations of origin in third country.

#### 4.5.2. *Screening for technical and other constraints*

Executive agencies are governed by Regulation (EC) No 58/2003<sup>87</sup>. While the Regulation opens certain possibilities, it does require the executive agency to operate under a Community program (involving commitment of expenditure in a limited delay of time) and it is not clear that the examination, registration and enforcement of protection of GI schemes would fit in that definition. Amendment of the Regulation to cover examination of applications is very unlikely (European Parliament agreement needed). The amendment would be responsibility of DG BUDG.

Reduction of Commission posts should follow.

As regards the enforcement of the protection, this task is presently performed by Member States.

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<sup>87</sup> Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11, 16/1/2003, p. 1).

#### 4.5.3. *Assessment of effectiveness, efficiency and consistency*

Low efficiency as previous studies show that in order to achieve efficiency, at least 50 people staff should be considered for an annual basis. The current flow of applications is around 100 per year and thus does not require that amount of work. Nonetheless, a number of factors have to be taken into account in making estimations on future applications (e.g. likely number of third country direct applications depending on bilateral negotiations' outcome, etc.).

The problem definition shows the legal aspect of the core problem. The examination of applications and the registration process implies a margin of appreciation. The number of cases before the European Court of Justice/OHIM Board of appeals could increase.

High effectiveness as to the harmonisation of registration at EU level.

### **4.6. Option E: Action through a Framework Directive**

#### 4.6.1. *Basic approaches*

Existing EU regulations would be replaced by a framework Directive, setting:

- the definition of geographical indication and/or designation of origin.
- a level of protection (similar to the level existing presently in current legislation).
- a registration system in every MS to recognise GIs originating in that MS.
- a notification system to the EU.

Every Member State would be responsible for the implementation of the framework directive. This would imply registering the names at national level. Member States would also have to ensure the protection to the names from other MS, which had been duly notified to the Commission under the Directive;

A body to solve the conflicts among the Member States might be needed (see European patent proposal on creation of "instance chamber").

#### 4.6.2. *Screening for technical and other constraints*

Adoption of a Directive under co-decision procedure. Repealing of the EU legislation, through a Council decision will be needed for Regulation (EC) No 510/2006 and their implementing rules, and the pertinent provision in wine Regulation (EC) No 479/2008 and implementing rules as well as provision included in spirit Regulation (EC) No 110/2008 (decisions would probably intervene under co-decision procedure).

The definitions laid down in the framework directive should be compatible with TRIPS definition of geographical indications.

Present registered names would be transferred to the "notification system".

#### 4.6.3. *Assessment of effectiveness, efficiency and consistency*

Low effectiveness as to a uniform approach of recognition of geographical indications, as every Member State would recognise its own GIs.

Low effectiveness as to a uniform approach of implementation of protection. A framework directive would lead to differences in the implementation of enforcement the protection between the Member States. Some MS would be enforcing by administrative means, other would require private legal actions to enforce protection.

Depending on the content of the Directive, this would lead to effectiveness in ensuring revenue to producers.

As to efficiency, this option would lead to a serious risk of highly increasing the number of notifications and thus of names to be protected in MS. Conflicts between GIs and trademarks in other Member States could increase, as well as disputes concerning the generic character of some names. As no EU objection procedure would exist, high risk of increase number of infringement procedures and/or ECJ cases on the conflictive cases would remain. With an increased number of geographical indications and designations of origin, credibility of the system might be put in question.

This would increase the burden on MS with regard to enforcement of protection of the increasing number of names that would be notified at EU level.

This would compel a third country to do a screening of the existing national legislations to decide a host country for the application. Most third countries would address their applications to same language speaking countries.

Low consistency with other agricultural policies (rural development, promotion).

### **4.7. Option F: Co - Regulation**

#### 4.7.1. *Basic approaches*

A legal act would define objectives and level of protection and a non- governmental organisation representing geographical indications would share responsibilities for the implementation:

- Recognition of GIs;
- Establish code of practices in respect of protection rights.

#### 4.7.2. *Screening for technical and other constraints*

This option would need the adoption of a legal act (e.g. Directive) to define a geographical indication, to define a level of protection and rely on a code of practices in respect of the process of recognising a GI and the protection of the property rights.

Presently more than 3000 GI do exist in 27 MS, which shows that producers of geographical indications products are numerous. Although in some MS national organisations regrouping interest of GI producers have been created, it remains an exception. Although one plurinational organisation (ORIGIN) exists, it does not adhere the overall existing GIs in

Europe, including also third country geographical indications. AREPO and AREV (Assembly of European Winegrowing Regions) are "assemblies" of regional administrations, representing in some cases also producers.

Neither MS nor the rest of operators of the chain(s) of the products (consumers, retailers, food industry in some cases, control authorities, certification bodies, and other potential users of the names) are equally represented in those organisations.

Moreover, resources in their present structures are scarce, and administrative experience for such a task is lacking.

Legal and economics dimension are important in the problem definition. For example disputes for the use of a name in translation or the manipulation of the products (conditioning) for certain fragile products.

So, co-regulation would present the technical limit of the election of the non- governmental organisation representing geographical indications players at EU level. Moreover, resources in their present structures are scarce, and administrative experience for such a task is lacking. Besides this, they would not have the means for the enforcement and the implementation.

#### *4.7.3. Assessment of effectiveness, efficiency and consistency*

This option would be efficient and effective in the recognition process.

Risk of low effectiveness as to the difficulty to choose the partner(s) as GI sector is fragmented.

Although this option presents efficiency and effectiveness as to the recognition process of a GI, the enforcement would present low effectiveness with regard to trademarks rules. Low effectiveness and efficiency in enforcement of protection since potential users of the name would not be involved.

High efficiency in surveillance of the market would depend on resources of representative organisations.

Low efficiency and effectiveness to apply commitments on bilateral agreements. High risk of discriminatory practices vis-à-vis third country GIs.

Low consistency with other EU agricultural and rural policies and no consistency with international trade policy (EC negotiation position in DDA).

### **4.8. Option G: Self - Regulation**

#### *4.8.1. Basic approaches*

Guidelines would set the minimum representative criteria groups of producers and/or operators (retailers, industry, promotion bodies control bodies) would have to comply. Each representative body would be able to set its own rules to create the GI scheme and govern it.

Protection to names would be ensured by code of practice including surveillance provided for by the above representative groups. A system of sanction could be created.

In the case of group of producers, the group prepares the specifications for one or more products, promote them EU wide, aiming at a differentiated product, a better market position and a price surplus, and is responsible for the scheme in general.

Level of protection would be equivalent to the one provided for in TRIPS.

Each GI body would make market surveillance.

#### *4.8.2. Screening for technical and other constraints*

Self-regulation would result in a non harmonised system, leading to a diverse implementation of the scheme, according to the economic interest and the chain power of players. Presumably, only some groups of producers would have the resources to establish such a system and only for products with economic significance in the market. Small groups dealing with local products would face difficulties to embrace the system.

Legal and economics dimension are important in the problem definition. Similarly to co-regulation (see option B.2 above) self regulation approach would present the technical limit of the fragmented sector, so non-governmental organisations representing geographical indications players at EU level would be difficult to emerge.

#### *4.8.3. Assessment of effectiveness, efficiency and consistency*

Burden for small farmers, producers and companies would be important and difficult to bear, especially with regard to the enforcement of protection.

Low efficiency as to a harmonised EU system, as self-regulation would result in a diverse implementation of the scheme.

Effective as to the low involvement of Commission and of Member States. Efficiency as to the national administrative cost would be lower and some players may proceed to a more effective communication of the scheme. Nevertheless, there is a risk of misleading the consumers, because of the non effective control system.

Low consistency with other EU agricultural and rural policies.

Low consistency with international trade policy. (EC negotiation of international and position in DDA and negotiation of bilateral agreements).

### **4.9. Option H: No action at Community level**

#### *4.9.1. Basic approaches*

This option would consist in repealing the EU legislation referring to GIs, without creating any additional EU legal instrument. Existing EU schemes would thus be discontinued and each MS would develop a system to ensure protection of the registered names, which could present diversity with 2 extremes:

- Some MS would act by establishing national GI *sui generis* protection system.

- Some MS would not act, therefore producers individually would decide to engage in protection through trademark law (collective, guarantee or certificate marks, at national level or Community trademark) or passing off law or unfair competition law or consumer law.

National regimes should of course be compatible with the ECJ case law developed with regard to geographical names prior to the lay down of the *sui generis* system for GIs.

We shall consider under this option the perspective of development of *sui generis* GI legislation in some MS. We might think that some Member States would develop a system for registration and protection of national geographical indications, and some would not.

We could also consider that Directive 98/34/EC<sup>88</sup> on national technical measures could be applied in that context: Member States send as a draft the names they intend to protect to the Commission for translation and circulation in all Member States. There is a period to comment/objection for every Member State.

#### 4.9.1.1. Screening for technical and other constraints

Repealing EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006 and their implementing rules, and the pertinent provision in wine Regulation (EC) No 479/2008 and implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (later decision would intervene under co-decision procedure).

The protection may be lower than the level of protection of present EU legislation for both wine and spirits and for agricultural products. Nevertheless as wine and spirits benefit for a higher level of protection we could predict that the ways to ensure it could also be diverse as for example no administrative control by the MS can be ensured.

Diversity inside the EU would increase the probability of market failure as to the non harmonised level of protection and mechanisms to ensure it. Without a mechanism of mutual recognition between MS, operators willing to be registered/protected in the EU would be facing 27 (or as much as systems would exist) registration procedures if MS decide to develop *sui generis* registration system.

Products circulating in the EU may risk misuse, usurpation, etc. outside the country which grants them protection.

In addition the diversity of action by the Member States would lead to a multiplication of regional labels and therefore creating more confusion among consumers.

#### 4.9.2. Assessment of effectiveness, efficiency and consistency

This option would present low efficiency in seeking registration and protection (as should be sought in every MS).

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<sup>88</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ L 204, 21.7.1998, p. 37).



Low effectiveness for harmonisation in the EU. The protection at EU level would be replaced by bilateral agreements among Member States, time and resource consuming.

Possible different level of protection would discriminate producers of wine and spirits from the rest of producers.

Low effectiveness in providing consumer information as to the guarantee of origin and the clear information, provided by the EU symbol

Not consistent with other EU policies encouraging developing of quality and high added value products, like rural development policy, promotion and common market organisations initiatives (in olive oil, cotton, etc.).

#### **4.10. Option I: Protection through international rules: Lisbon agreement.**

##### *4.10.1. Basic approaches*

Protection would be granted through the **Lisbon Agreement** for the Protection of Appellations of Origin and their International Registration<sup>89</sup> (hereinafter referred to as Lisbon Agreement), administered by WIPO (World Intellectual Property Organisation).

That system would replace present EU legislation. Protection would be ensured by the terms of the agreement.

No EU register would be needed as MS would directly register GIs under the agreement. Presently only 7 MS apply Lisbon, 2 more have signed it.

##### *4.10.2. Screening for technical and other constraints*

Repealing of the EU legislation, through a Council decision would be needed for Regulation (EC) No 510/2006, the pertinent provision in wine Regulation (EC) No 479/2008 and their implementing rules as well as provisions included in spirit Regulation (EC) No 110/2008 (later decision would intervene under co-decision procedure),

Strong EU involvement would be needed:

- Negotiation for an amendment or a revision of the Lisbon Agreement as membership is currently open to states only. It would be necessary to allow regional organisations to adhere.
- Negotiations on definitions might also be needed, as the definition of appellation of origin of the Lisbon agreement is stricter than the EU definition of geographical indication. EC to become party to the Lisbon Agreement.

The Lisbon agreement failed to attract support from more than a few states (26). The main problem is that accession is confined to those nations which protect appellations of origin as “such” (thus states which protect geographical names under unfair competition or consumer protection laws are locked out).

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<sup>89</sup> [http://www.wipo.int/lisbon/en/legal\\_texts/lisbon\\_agreement.htm](http://www.wipo.int/lisbon/en/legal_texts/lisbon_agreement.htm)

It could be noted that of the 810 appellations registered under the Lisbon Agreement, the vast majority (over 66%) belong to France. Many Lisbon Agreement Members have no appellations.

**Table 7: registrations under Lisbon Agreement**

|              |     |              |                                  |
|--------------|-----|--------------|----------------------------------|
| France       | 508 | Czech Rep.   | 76                               |
| Bulgaria     | 51  | Slovakia     | 37                               |
| Hungary      | 28  | Italy        | 28                               |
| Georgia      | 20  | Cuba         | 19                               |
| Mexico       | 11  | Algeria      | 7                                |
| Portugal     | 7   | Tunisia      | 7                                |
| DPR of Korea | 4   | Moldova      | 1                                |
| Peru         | 3   | Montenegro   | 2                                |
| Israel       | 1   | <b>TOTAL</b> | <b>884 of which 810 in force</b> |

Source: WIPO website: <http://www.wipo.int/lisbon/en/>

Lisbon is a “government-to government” notification and registration system. Private parties may neither notify GIs nor object to their protection. Private right holders have no opportunity to challenge notifications or to petition for cancellation.

The recent two enlargements of the EU have also posed certain challenges to the Lisbon system in terms of its capacity to deal with developments in international law relating to the protection of indications of geographical origin. The new EU Member States that were also contracting countries of the Lisbon Agreement had specific concerns about the impact of the transitional arrangements in question. Since the enlargement of the EU in 2004, none of these problems have been resolved in an entirely satisfactory manner<sup>90</sup>. The option at issue would solve the problem.

#### 4.10.3. Assessment of effectiveness, efficiency and consistency

Inefficient with regard to the protection as not all the geographical indications would be covered by the Agreement. Lisbon Agreement applies to designations of origin (for which an essential or exclusive link to the area is needed). However it should be noted that out of 818 names registered up to 31.12.2008, only 452 are designations of origin. Few spirit drinks are designations of origin, and around half of wine GIs are designations of origin.

Long process and strong involvement of resources of the Commission would be needed in the negotiation phase. Nevertheless, once achieved, efficiency would be high as to the registration and protection process for designations of origin.

This option may negatively affect multilateral DDA negotiations policy (as it would diminish interest in TRIPS multilateral register and “extension” negotiation).

It would be inconsistent also with ongoing bilateral negotiations with third countries (e.g. Switzerland, Ukraine and Georgia).

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<sup>90</sup> Ficsor, *Challenges to the Lisbon system*, paper prepared for WIPO Forum on Geographical Indications and Appellations of Origin, Lisbon, October 30 and 31 2008. Available at: [http://www.wipo.int/edocs/mdocs/geoind/en/wipo\\_geo\\_lis\\_08/wipo\\_geo\\_lis\\_08\\_theme1\\_ficsor.pdf](http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_lis_08/wipo_geo_lis_08_theme1_ficsor.pdf)

Protection in countries signatory of the Agreement would be facilitated for designations of origin. Protection granted by the Lisbon Agreement is similar to the present protection granted by the EC legislation.

Low effectiveness with regard to implementation of protection as the EU system would not be harmonised, as every Member State would result in a diverse implementation of the scheme. Presently only 6 Member States are parties to the Lisbon Agreement and 2 more have signed it.

#### **4.11. Fine-tuned shortlist for further analysis**

Action through a **Framework Directive** (Option E) presents a low consistency with one of the objectives of the policy, i.e. to have a harmonised framework. It will not be retained for the analysis of impacts.

**Co-regulation** (option F) and **self-regulation** (option G) options need the involvement of non-governmental organisations, social and economic partners. The highly fragmented representation of that interest and the economic and legal dimension of the problem are structural limits that make those options low effective and efficient in comparison to the other options; they will not be considered for further analysis.

**No action at Community level** (option H) would lead to a greater risk of market failure as to the non harmonised level of protection and mechanisms to ensure it. In absence of a mechanism of mutual recognition between MS, operators willing to have their products' names registered/protected in the EU would be facing 26 (or as much as systems would exist) registration procedures if MS decide to develop *sui generis* registration system. Products circulating in the EU may risk misuse, usurpation, etc. outside the country which grants them protection. In addition the diversity of action by the Member States would lead to a multiplication of regional/local labels and therefore creating more confusion among consumers.

**International rules option through Lisbon Agreement** (option I) would be impossible to apply in a short term, as an international negotiation to adhere to WIPO would be needed as well as some amendments on definitions.

The options retained for further analysis are:

- Option A. Abolish current *sui generis* PDO/PGI system at EU level + develop EC certification/collective trademark
- Option B. Status quo including simplification of PDO/PGI schemes and streamlining existing procedures:
  - Sub-option B.1: merging PDO and PGI definitions.
  - Sub-option B.2: merging of Wines-Spirits-Agricultural product systems.
  - Sub-option B.3: create national systems of protection of names and reducing the number of PDO/PGI.

- Option C: Clarifying PDO/PGI rules.

Option C is combinable with B options. Option A is not combinable with B or C.

Finally, the Agency option (D) is essentially a management option. It would be combinable with B and C. It will not be considered at this stage of the impact assessment which is intended to identify political orientations. It will be considered in further steps of the process.

## **B.5. IMPACT OF OPTIONS**

### **5.1. Option A: Abolish PDO/PGI at EU level and development of Community trademark system (existing Community collective trademark and possible new Community certification mark)**

#### **Economic impacts**

##### **a. Functioning of the internal market and competition**

As regards competition in the internal market, the negative influence stemming from the possible introduction at EC level of a new IPR (i.e. Community certification mark) - by nature restrictive of competition - would be compensated by the repealing of the GI instrument.

##### **b. Operating costs and conduct of business/Small and Medium Enterprises**

Negative impact in terms of costs: the experience of EU GI producers shows that it is in general, more costly to obtain legal protection of GIs in trademarks systems than in *sui generis* systems.

Although a trademark registration provides for an exclusive right on the registered name, in most countries where geographical names are protected via a trademark system producers need to continue to assert their rights. This entails a significant cost of market surveillance: a regular monitoring of the markets where the trademark is protected is essential. Producers need to be ready to launch all necessary legal actions to protect their intellectual property right by private action. With this regard it is worth mentioning that The European Parliament has recently adopted a non legislative resolution on “Enhancing the role of European SMEs in international trade”<sup>91</sup>. It supports the establishment of an international multilateral register of geographical indications enabling SMEs to protect their own geographical indications in a simple and economical manner.

All GIs systems based on trademark law require the payment of registration fees, this being only possible in *sui generis* regimes. Protection via trademarks implies periodical renewal of registration. However, it has to be noticed that recent trend is in the sense of lowering fees: fees 1050 € paper filling (under proposal of the Commission to be adopted in March 2009). Reduction of 150 € if electronic filling.

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<sup>91</sup> On 5.2.2009 the European Parliament adopted by 437 votes to 77, with 69 abstentions, a non legislative resolution (INI/2008/2205) on “Enhancing the role of European SMEs in international trade”.

It could be noticed that reducing the costs of enforcement was a major reason for certain third countries producer groups to seek protection through the EU GIs *sui generis* system.

The transition between the current *sui generis* system and a TM system could entail additional costs for current GIs beneficiaries (investments in promotion campaigns, etc).

As delays in trade mark procedures are normally significantly shorter than in *sui generis* systems, the TM option could have a positive impact on the efficiency of businesses' planning and marketing strategies, resulting in a better ratio costs/benefits. Positive impact with regard to the time required to successfully complete a registration procedure.

Positive impacts as regards costs for control and certification, that would not be sustained.

c. Administrative burdens on businesses

This option would reduce, albeit in a limited way, administrative burdens on businesses with regard to the registration procedure. It is commonly accepted that an application for registration of a name as GI requires more information than the process leading to registration as collective or certificate mark.

Positive impact also on control and certification burdens.

d. Property rights

Option A would result in a clear identification of the ownership of the intellectual property right, while ownership is a complex concept for GIs<sup>92</sup>. Certifications marks are generally owned by groups/bodies which do not trade in the relevant products (usually a certification authority). As regards the Community collective mark, it is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

Negative impact on the level of protection: no "absolute protection" (i.e. the use of the name is prohibited even though the consumer is not misled about the true origin of the product) of the name is possible via a TM system. As shown by existing TM systems, the coexistence of similar marks would not be ruled out.

Normally, in systems where GIs are protected by certification or collective marks rather than under a *sui generis* GI regime, the principle of "first in time, first in right" applies to conflicts between the same or similar marks. A valid prior registration of a geographical trademark by an individual producer can thus obstruct the subsequent registration or use of a GIs as a collective or certification mark in that jurisdiction<sup>93</sup>.

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<sup>92</sup> Audier, "Quelle stratégie juridique pour la commercialisation du produit agricole? Marques et indications géographiques de la filière viti-vinicole", *Revue de droit rural*, 311(2003).

<sup>93</sup> Gangjee, Protecting geographical Indications as collective Trademarks. The prospects and Pitfalls, Institute of Intellectual Property, Tokyo, (2006), available at:

Option A would be compatible with EU Charter of Fundamental rights (Art. 17: "Intellectual property shall be protected"). Specific provisions on certification marks are already provided for in a number of MS legislations and are referred to in Directive 2008/95/EC.

Current holders of intellectual property rights stemming from PDO/PGI protection would be negatively affected: the level of protection provided for by a TM regime would be lower than the existing one. Current applicants seeking registration of names as PDO/PGI would be affected with regard to the protection transitionally granted at national level.

#### e. Consumers

While there is no available data to infer that a complete shift to the Community TM system as a means to protect GIs would affect the prices that consumers pay and/or the quality of products available, such a change could have effects on consumer information. Depending on the way the difference between different legal instruments (EC collective marks *stricto sensu* and possible certification marks) is presented to and perceived by consumers, market transparency may be enhanced or curtailed.

The abolition of established EU GI symbols would have a negative impact on consumer information.

#### f. Specific regions or sectors

In case rules on a specific Community certification mark are laid down, the system take-up may be unevenly distributed on a geographical basis due to different familiarity with this type of IPR (certification marks) in a number of MS.

Draft Opinion on the "Green Paper on agricultural product quality", of the Committee of Regions<sup>94</sup>, of 12-13 february 2009 welcomes the acknowledgement in the Green Paper that agricultural quality is intrinsically linked to regional traditions, development and sustainability, but these need to be enhanced and protected through schemes such as Geographical Indication schemes (GIs) and their intellectual property respected internationally. The draft Opinion considers that Local and Regional Authorities have extensive experience and established competence to influence and support agricultural quality production by their actions in managing EU rural development plans, spatial planning and regional development. There are many cases where authorities have fostered quality through their support for schemes such as GIs. Moreover, it points out that Local and Regional Authorities control large budgets to support agricultural quality through the EU Rural Development Programmes. Local and Regional Authorities

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[http://www.lse.ac.uk/collections/law/staff%20publications%20full%20text/gangjee/Gangjee\\_IIP%20Report%202006.pdf](http://www.lse.ac.uk/collections/law/staff%20publications%20full%20text/gangjee/Gangjee_IIP%20Report%202006.pdf)

<sup>94</sup> Committee of Regions, Draft Opinion on the "Green Paper on agricultural product quality", 78<sup>th</sup> plenary session, 12-13 february 2009.

are key to establishing priorities and implementing the programmes which have achieved success in developing and delivering real advantages to EU farmers.

g. Third countries and international relations

The EU is the principal advocate of greater protection for GIs around the world, by way of bilateral negotiations, in the context of WTO/TRIPS or in the context of the WTO Agriculture Agreement negotiations<sup>95</sup>. Option A would represent a radical departure from the current EC negotiation position on geographical indications in DDA and in a number of ongoing bilateral negotiations with third countries on GIs protection.

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement<sup>96</sup>.

The option at issue would also put into question some agreements on GIs protection signed or under negotiation with third countries.

It would also affect some non-sectoral agreements. For instance, the Agreement CARIFORUM – EC EPA (European Partnership Agreement) sets out some important provisions on GIs. There is a *rendez-vous* clause according to which the CARIFORUM States will establish a system of protection of GIs by 2014. In the meantime provisions aim at fostering cooperation to identify and promote GIs in CARIFORUM via the active involvement of the EPA Trade and Development Committee<sup>97</sup>. According to the parties, GIs as development tools can play a valuable role in developing countries to create a genuine niche for development of agri-food industries. GI products constitute a genuine interest for producers as they unlock value by capitalising on consumers desire for diversity and typical quality products. In particular the combination of GIs (guaranteeing origin and quality of a product) with fair trade schemes (guaranteeing sustainable production conditions) can be a powerful development tool.

In the long term, the abandonment of a *sui generis* system could affect, albeit indirectly, developing countries' effort to protect traditional knowledge via a *sui generis* regime.<sup>98</sup> Traditional Knowledge (hereinafter TK) and GIs) share a common element insofar as they both protect accumulated knowledge typical to a specific locality. While TK expresses the local traditions of knowledge, GIs stand for specific geographical origin of a typical product or production method. GIs and TK relate a product (GIs), respectively a piece of information (TK), to a

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<sup>95</sup> Van Caenegem, "Registered GIs: Intellectual Property, Agricultural Policy and International Trade", *European Intellectual Property Review*, p. 170, 2004.

<sup>96</sup> Art. 63(2) of TRIPS reads as follows: "Members shall notify the laws and regulations referred to in paragraph 1 (i.e. *Laws and regulations and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights)*) to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement.

<sup>97</sup> "Cariforum-EC EPA: Innovation And Intellectual Property" – European Commission. [http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc\\_140978.pdf](http://trade.ec.europa.eu/doclib/docs/2008/october/tradoc_140978.pdf)

geographically confined people or a particular region or locality<sup>99</sup>. The African Group proposed that TK is a “category of IPR” for which a *sui generis*-type protection should be accorded. The African proposal prefers top-down protection of TK, whereby a multilaterally agreed standard would serve to unify the different national laws. GIs may ensure protection for TK, which for some reason does not fulfill the criteria for patent protection, usually because no TK holder can be identified.

Some commentators consider that GIs protection for developing countries a dilemma with both potential for positive and negative outcomes<sup>100</sup>. However, as a matter of fact the proposal that GI absolute protection should go beyond wines and spirits was endorsed by the African Group: GIs protection should be extended to other products recognisable by their geographical origins (handicrafts, agro-food products).

Nonetheless, it is important to note that GI protection is not a North-South issue. Interests in the developing world vary, according to the economic structures and objectives.

A study prepared for the UNCTAD Biotrade Initiative<sup>101</sup> recognises that "More than other major types of intellectual property, geographical indications have features that respond to norms for use and management of bioresources and traditional knowledge that are characteristic of the culture of many indigenous and local economies". For instance, one very important area where GIs could be applied is the protection of plants or plant-based products<sup>102</sup>.

#### h. Public authorities

The option in question would likely have positive, albeit limited, impact on national administrations. In case of a certification mark, the certification authority could be a local government entity or a private association.

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<sup>99</sup> Panizzon and Cottier, “Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions”. In Petersmann (ed.). “Developing Countries in the Doha Round. WTO Decision-making Procedures and Negotiations on Trade in Agriculture and Services, 2005, pp. 227-268.

<sup>100</sup> See for instance, Mosoti and Gobena, for the Development Law Service, FAO Legal Office, “Geographical Indications and trade in agricultural products”, in “International trade rules and the agriculture sector Selected implementation issues”, FAO Legislative Study No 98, 2007.

<sup>101</sup> See Down and Alird, "Innovative Mechanisms for sharing benefits for biodiversity and Related Knowledge: case Studies on Geographical indications and Trademarks", paper prepared for the UNCTAD Biotrade Initiative, 1999.

<sup>102</sup> “Several designations of plants such as fruit, vegetables and cereals are protected in the EU as GI. Examples include the "Riso Nano Vialone Veronese" for rice from Italy and the "Arroz de Valencia" and the "Arroz del Delta del Ebro" from Spain. The successful application of these designations to plants shows that GIs could serve as a useful tool for indigenous and local communities and farmers to protect their plants or to enhance the marketing value of their plant-based products which are produced in a specific region and have specific characteristics due to their geographical origin”. In Addor and Grazioli, "Geographical Indications beyond Wines and Spirits. A roadmap for a better protection for Geographical Indications in the WTO TRIPS Agreement", *The Journal of World Intellectual Property*, Vol. 5 No 6, November 2002



At Community level, option A would likely result in enlarging the competences of the regulatory agency competent on Community trademarks (OHIM), while DG AGRI would presumably have to reorganise its organigram.

In the light of the opposition expressed by a majority of MS as well as of the historical attachment of a number of Central and Southern MS to the GI instrument, a problematic take-up of the TM system is likely.

### **Social impacts**

The economic literature on welfare implications<sup>103</sup> of various mechanisms designed to encourage producers to geographically differentiate and collectively market their products (GIs included), has shown that the stronger the level of property right protection, the greater the incentives for producers to develop geographically differentiated agricultural products. Moreover, it has been shown that stronger property right protection for producer organisations may be welfare enhancing even after a geographically differentiated agricultural product has been developed. Compared with TM protection, the *sui generis* GI rules are likely to dominate in terms of ex ante societal surplus (i.e.: surplus that accounts for incentives to develop geographically differentiated products). Therefore, while any extension of such rules providing producer organisations with stronger control over supply should lead to an increase in the formation of geographically differentiated products organisations and ultimately in social welfare, a purely TM option is likely to be less social welfare enhancing.

### **Environmental impacts**

It could be argued that this option may have a negative environmental impact since it would be necessary to include farming practices usually provided for in PDOs specifications.

It is worth mentioning that the European Parliament resolution of 2008 on the CAP 'Health Check'<sup>104</sup> mentions the issue of the recognition and protection of GIs among European "non-trade concerns" in world trade talks the Commission should urgently push through so as to prevent unfair competition against European producers.

## **5.2. Option B: Simplification of present legislation and streamlining of procedures.**

### **Economic impacts**

#### **a. Operating costs and conduct of business/SMEs**

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<sup>103</sup> See for example, Lence, Marette, Hayes and Foster, "Collective Marketing arrangements for Geographically Differentiated Agricultural products: Welfare Impacts and Policy Implications. "American Journal of Agricultural Economics", Vol 89, No 4, pp. 947-963, 2007.

<sup>104</sup> European Parliament resolution of 12 March 2008 on the CAP 'Health Check' (2007/2195(INI)).

The shortening of the registration procedure by simplification and streamlining of procedures could have a positive impact on the efficiency of business planning and marketing strategies, resulting in a better ratio costs/benefits.

The harmonisation of delays for the three systems could facilitate access to the system to operators willing to oppose to the applications for protection. It could nevertheless argue that reduction of objection delays from 6 to 3 months would limit the potential objections.

b. Public authorities

It could be argued that the reduction of examination periods could lead indirectly to a better quality of applications submitted to national authorities and thus to the Commission. The stricter time constraints and the consequent less room for applications' improvement via Member States-Commission exchanges would result in better drafting of applications to avoid negative straight decisions from the Commission services.

Harmonisation of delays would increase efficiency and coherence between the three systems for national administrations dealing with applications and objections.

c. Property rights

Shortening of delays would contribute to legal certainty for GI applicants.

The shortening of procedural delays would also benefit trademark applicants (as to a trademark registration after a GI application submission).

**Social impacts**

a. Consumers

Visibility of the PDO/PGI scheme would be increased as the three systems would share the same principles and could be marketed using the same European symbol. This would reduce the diversity existing on the market causing "fatigue of logos" to consumer.

**Environmental impacts**

No environmental impact has been detected.

Simplification aspects are further considered below under options B1, B2 and B3.

**5.3. Option B1: Merging of the 2 definitions for geographical indications and designations of origin**

**Economic impacts**

a. Operating costs and conduct of business/Small and Medium Enterprises

This option may result in additional costs for enterprises that have invested in marketing and communication to promote the recent graphic differentiation between PDO and PGI symbols.

b. Consumers

Given the long time establishment of the designation of origin definition, it is likely that at least in some MS the distinction between PDO and PGI would not disappear completely in the marketplace. The commercial use of such designation would increase consumer confusion.

c. Third countries and International relations

The merger of PDO and PGI definitions would also present advantages in bilateral agreements' negotiations, as would contribute presenting a simpler EU system.

**Environmental impacts**

Assuming that the merging would result in retaining the definition of geographical indication, that could affect the potential of geographical indications for contributing to preserving biodiversity. PDOs can better favor local development because of their strong link to origin and thus contributing to environment and biodiversity<sup>105</sup>.

**5.4. Option B2. Creation of a single register for wines-spirits-agricultural geographical indications and possibly adoption of a single legislative act.**

**Economic impacts**

a. Functioning of the internal market and competition

Set up of a single register as well as the adoption of a single legislative act concerning the protection of geographical names for wines, spirits and agri-products, would clarify the current framework, making enforcement easier, thereby contributing to fighting anti-competitive behaviors.

b. Administrative burdens on businesses

While some administrative burdens related to sectoral specificities would remain, nevertheless, the harmonisation of registration and amendment procedures further to the merging would contribute reducing administrative complexity.

c. Property rights

The option would not affect existing rights of GIs holders.

Option B1 would facilitate information vis-à-vis enforcement authorities on the level of protection as well as on the names protected.

d. Consumers and households

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<sup>105</sup> Valenzuela Zapata, Marchenay, Berard and Foroughbakhch, "Conservación de la diversidad de cultivos en las regiones con indicaciones geográficas. Comparación del tequila y calvados", *Sociedades rurales, Producción y Medio Ambiente*, Vol 5 Número 8 (7-22), 2004.

The merging and related streamlining of the three systems (wines, spirits and agricultural products) could reduce the risk of consumers' confusion with regard to Community schemes, symbols and indications.

e. Specific regions or sectors

Withdrawal of wine and spirits GI provisions from their respective legislation would create initially confusion among those sectors. They could have the impression that existing rules would undergo significant changes. However, the option's objective is to maintain present rules by grouping them under a single legislative act.

As wine production is concentrated in 9 Member States, the measure would affect essentially those countries.

f. Trade policy

The merging of the three systems (wines - spirits - agricultural products) could support the EC negotiation position on the need for an extension of TRIPS protection granted to wines and spirits to agricultural products as.

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement.

g. Third countries and international relations

The merger of the three registers could have a positive impact vis-à-vis third countries as the Register would include all third countries GIs, protected either through EU domestic legislation or through bilateral agreements.

h. Public authorities

Enforcement through administrative protection would be easier as only one list would group the protected GIs in the EU

Positive impact on enforcement since public authorities would apply the same level of protection to all GIs.

**Environmental impacts**

This option may have an indirect positive impact on environmental sustainability. It could be noticed that environmental concerns are not explicitly spelt out in the recitals to Regulation (EC) No 510/2006, while Regulation (EC) No 479/2008 on wine, albeit with regard to some specific aspect, makes reference to environment. The merging of the three systems may provide the opportunity to valorise environmental-friendly aspects of GI protection for all concerned classes of products.

The recent wine reform simplified the wine labelling provisions by setting up a single legal framework applying to all the different categories of wine and removing the distinction between the rules on labelling wines with and without

geographical indications<sup>106</sup>. The system is fundamentally based upon the common notions of designation of origin and geographical indications laid down in Regulation (EC) No 510/2006. The merger of the three systems would represent a further step towards a simpler and more transparent EU legislation on GIs.

## **5.5. Option B3 Simplification including streamlining existing procedures and introduction of national systems**

### **Economic impacts**

#### **a. Functioning of the internal market and competition**

Traditionally GIs are not linked to the size of the market of the product and are applied to products of different kinds, with widely varying production structures. That means that the reference markets are very different, and so production volumes.

The creation of national systems - beside the EU PDOs/PGIs - should be carefully thought through in its conception and implementation so as to avoid the risk of fragmenting the single market because of national exclusive protection.

In the current EU GI system the distribution of competences between the MS and the Commission is attributable particularly to the fact that registration presupposes verification 'that a certain number of conditions have been met, which requires, to a great extent, detailed knowledge of matters particular to the Member State concerned, matters which the competent authorities of that State are best placed to check'. It could be argued that the set up of national systems would represent a step forward in this direction.

However, the need to ensure that a uniform approach is followed across the MS has to be taken into account. While it is true that competition national authorities in MS have intervened to address a number of anticompetitive practices at national level, nonetheless, the lack of a supranational level of scrutiny could raise a significant issue in terms of uniformity in the rules' implementation, especially in cases where the product's specification provides for certain restrictions to free movement of goods and services. It should be borne in mind that unjustified restrictions - even if referred to products with quantitatively limited production - could potentially pose obstacles to the free circulation of goods and services in the single market. The Treaty prohibits all measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a particular advantage for national production or for the domestic market of the State in question.

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<sup>106</sup> Gonzalez Vaque and Romero Melchor, "Wine labelling: Future perspectives", *European Food and Feed Law*, 2008.

b. Operating costs and conduct of business/Small and Medium Enterprises

SMEs, that represent the greater part of European food firms producing PDOs and PGIs<sup>107</sup>, meet difficulties in adapting their strategies to market changes, and in competing with big enterprises. It can be assumed that the set up of national systems well suited in terms of costs/benefits to the specific needs of small PDO/PGI productions could contribute improving their marketing performance. Even if such “micro GIs”<sup>108</sup> are unlikely to benefit from sales beyond their own region, they are potentially useful in the development of tourism, where the cultural identity bestowed by the concept of *terroir* and the GI system can be valuable.

c. Administrative burdens on businesses

Depending on the way the national procedures are conceived and implemented, there could be a positive impact in terms of reduction of administrative burdens for producers of products with only local economic significance.

d. Property rights

Negative impact on the intellectual property rights of producers of products bearing a registered name at national level as would be enforceable in the same country only.

Subject to the concrete definition and implementation of the national systems, the possible introduction of a new form of intellectual property right at national level could complicate the legal framework.

e. Consumers and households

Effects on consumers would depend on the modalities the national systems are shaped and communicated to the public. For instance, an inadequate communication could easily induce consumers to mistakenly believe that the different level of protection (national vs. EC) implies some sort of hierarchy in terms of specific quality.

Negative impact on consumer information since national geographical schemes would coexist with EU schemes.

The creation of national systems to protect certain products' names may have an indirect effect on the take-up of existing national collective/certification marks instruments (so called regional/local "quality label") established in the MS. However it appears difficult to define such an impact.

f. Specific regions or sectors

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<sup>107</sup> Belletti, Burgassi, Manco, Marescotti, Pacciani and Scaramuzzi, “The roles of geographical indications on the internationalisation process of agri-food products”, 105th Seminar of European Association of Agricultural Economists (EAAE), March 8-10, 2007, Bologna, Italy.

<sup>108</sup> Josling, “The war on terroir”, *Journal of Agricultural Economics*, Volume 57 Issue 3, 2006, pages 337 – 363.

On the basis of current uneven geographical take-up of the EU GI system in MS, it can be assumed that due to diverse historical and legal traditions some MS would not put in place national protection systems for geographical indications. Producers in these countries would therefore face a disadvantage.

g. Third countries and international relations

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement.

The establishment of national systems should comply with WTO obligations. Therefore, this would raise the issue of third countries producers' right to protect geographical names in their own territory via national systems.

h. Public authorities

Providing the possibility for national systems of names' protection for products which meet certain economic/trade criteria would decrease the MS workload on applications to be submitted to the Commission.

Positive impact on enforcement authorities, as they would only need to enforce the limited of names of the EU register. Nevertheless, in some MS public authorities would face an increasing number of names protected at national level.

**Social impacts**

a. Employment

The set up of national systems tailored for products which are not of European economic significance could be an incentive for small food businesses to seek names' protection to better compete in the market. This would end up in supporting local employment. The specific qualities of these products are at least in a number of cases associated with an extensive system of production and processing, which implies a higher rate of employment than in intensive system dedicated to commodities or innovative food products.

b. Social impacts in third countries

No impact on third countries given the scale of production of products bearing the national protection. Nonetheless, any national system should be in compliance with TRIPS obligations.

**Environmental impacts**

Within the framework laid down at EU level, it is likely that a number of MS would take the opportunity of national systems to fully exploit the environmental potentialities of the GI instrument.

## 5.6. Option C: Clarifying PDO/PGI rules

### Economic impacts

#### a. Functioning of the internal market and competition

A number of legislative clarifications, for instance with regard to the origin of raw materials and the rules on the use and advertising of PDO/PGI as ingredients may affect market transparency and information to the buyers. The economic literature<sup>109</sup> has highlighted how asymmetrical information can reduce the quality level in the market. Asymmetrical information applies when the producer is in a better position than the buyer to know the exact quality of its product, which is precisely what occurs when rules on raw materials and ingredients are not sufficiently clear.

#### b. Administrative burdens on businesses

According to the concrete solution adopted to address the above problems, there may be different consequences on businesses. For instance, the establishment of an obligation to inform the producer group/national authority regarding the use of a PDO/PGI as ingredient in a processed product would increase the administrative burden on businesses.

#### c. Property rights

Depending on the concrete solutions implemented to regulate the relation between users of names as holders of different IPR (TM and GIs), the concerned intangible assets will be affected differently.

#### d. Consumers and households

The clarification of constraints with regard to the use of GIs products as ingredients and the source of raw materials in GIs would positively affect consumer information.

#### e. Specific regions or sectors

The pattern of distribution of registered GIs shows a strong bias towards Less Favoured Areas (LFAs)<sup>110</sup>. In most MS the great majority of PDO/PGI products come from such regions. Regionally designated products, whilst not exclusive to LFAs, tend to be associated with agricultural peripheral regions precisely because such regions have, for a variety of reasons, failed to fully engage with the “productivist” conventions that have predominated the agro-food system in the second half of the 20th century. The clarification of a number of problematic issues may contribute to increase the magnitude of positive effects on these areas.

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<sup>109</sup> See Poinelli, “An economic assessment of the International Protection of Geographical Indications”, paper presented at 9th Joint Conference on Food, Agriculture and the Environment, Bologna, 28 August–1 September 2004. Available at: <http://www.tesaf.unipd.it/minnesota/It/mauro-poinelli.pdf>

<sup>110</sup> Parrot, Wilson and Murdoch, “Spatialising quality: regional protection and the alternative geography of food”, *European Urban and regional studies*, Vol. 9, No 3, 241-261 (2002).



f. Third countries and international relations

The insertion of provisions on names' registration via bilateral agreements into GI legislation would help third countries in assessing the pros and cons of different ways to seek protection for their products in the EU.

Clarification of the relation with trademarks would decrease legal uncertainty.

In order to comply with WTO obligations, the new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement.

g. Public authorities

Better rules on the relation of GIs with other users of names (trademark, plant varieties and animal breeds, prior users, etc.) would make it easier for public authorities to assess appropriately the effective status of a name at national level, thus reducing the risk of prejudice against third parties' rights.

**Social impacts**

a. Employment

A clarification of certain provisions in the legislation in force would make it possible the full realisation of GI potentialities, reinforcing some of its intrinsic advantages. GIs tend to have a positive effect on the regional employment situation, although the overall quantitative impacts differ strongly between the cases. Traditional processing methods may require a higher input of manual labour than industrial substitute products, which benefits employment. Even when a GI production in a given area does not lead directly to employment, it may at least limit a general trend towards decline of employment in the agricultural sector. Indirect positive effects on employment are also reported through the promotion of tourism or via benefits to the local gastronomy and other companies in the region that either process or sell the product.

**Environmental impacts**

a. Soil quality or resources

EU legislation on protection of GIs includes some instruments that could be useful for addressing environmental problems. On one hand, a PDO/PGI is a governance tool that could be used in addressing sustainability problems. For example, work has been undertaken in the frame of the EU's LIFE programme to promote sustainability of PDO-PGI production for certain products. One of the "Pilot projects Minimum Impact" aims to reduce the environmental impact and promoting the sustainable development in the context of the designation of origin "Jamón de Huelva" and at the same time offer greater quality products (LIFE98 ENV/E/000375). Another project concerns the PDO Arroz del Delta del Ebro, to

permit it remains sustainable within the environment on which its special character depends<sup>111</sup>.

On the other, under present legislation, each GI has to comply with a set of minimum rules that have to be included in the specifications, notably management of yields in wine or detailed rules on feed for animal production. Concerning PDO, EU rules impose that feed comes in majority from the defined area.

b. Biodiversity, flora, fauna and landscapes.

The clarification of the relation with other users of plant varieties and animal breeds' names could indirectly contribute to the role played by GIs in conserving varied local ecosystems at various levels: animals, plants (breeds and local varieties), plant association, and microbial systems.

It has been observed that “quality is a term that can conceptually link increasing consumer demand for differentiated product taste with increasing regulatory pressure from environmental protection. Synergistic benefits from such a linkage have the potential to strength rural development initiatives. California winegrape growers, wineries have responded to public criticism about the expansion of vineyards and agricultural pollution by creating sophisticated networks to define, extend and publicise sustainable farming practices. Geographic branding and quality marketing carry with them the potential to enhance income to producers, but they also expose the specific circumstances of production to criticism on environmental grounds.<sup>112</sup>

Another dimension of biodiversity relates to the diversity within an area and can be addressed through requirements on extensive practices. In some economically successful cases, in order to prevent the trend towards a monoculture system encouraged through economic incentives, convergence with organic productions methods is a way to maintain environmental benefits<sup>113</sup>.

## B.6. COMPARING THE OPTIONS

Likely advantages and drawbacks of options retained for impact analysis are listed below.

|   | <b>Advantages</b>                 | <b>Drawbacks</b>   |
|---|-----------------------------------|--|
| <b>Option A: Abolish PDO/PGI and develop Community TM</b> | Clear identification of ownership | Limited level of protection (i.e.: no “absolute” protection) |

<sup>111</sup> Pilot project Minimum Impact. Reducing the environmental impact and promoting the sustainable development in the context of the denomination of origin “Jamón de Huelva” (LIFE98 ENV/E/000375) [http://www.mma.es/secciones/ayudas\\_subvenciones/life/que\\_es/pdf/librolife2003\\_1p2.pdf](http://www.mma.es/secciones/ayudas_subvenciones/life/que_es/pdf/librolife2003_1p2.pdf)

Also see LIFE 02/ENV/E/255 (Pollutant-free rice packing in the Ebro Delta); LIFE 96/NAT/SP/3133.

<sup>112</sup> Douglass Warner, “The Quality of sustainability: Agroecological partnerships and the geographic branding of California winegrapes”, *Science Direct*, 2006.

<sup>113</sup> “Promotion of traditional regional agricultural and food products: a further step towards sustainable rural development”, Twenty-sixth FAO Regional Conference for Europe, Innsbruck, Austria, 26-27 June 2008.

|  |   |  |
|--|---|--|
| <p><b>system (possible Community certification mark)</b></p>   | <p>Lower administrative burden for public authorities concerning enforcement</p> <p>Shorter delays for registration procedure</p>   | <p>Compulsory registration fee/compulsory periodical renewal fee</p> <p>Higher cost of market surveillance</p> <p>Enforcement only through private action</p> <p>Problematic transition to a purely TM system</p> <p>If specific rules on a Community certification mark are to establish, need for amendment to CTM Regulation (DG MARKT)</p> <p>Not supported by majority of MS</p> <p>Affects bilateral treaties with 3C</p> <p>Risk of regional uneven take-up</p> |
| <p><b>Option B: streamlining EU procedures</b></p>   | <p>Shortening and harmonisation of procedures will:</p> <ul style="list-style-type: none"> <li>- Reduce cost for operators</li> <li>- Increase efficiency and coherence between the three systems.</li> </ul>                                       | <p>Reduced time delays for amicable procedures in conflicting cases.</p>   |
| <p><b>Option B1: streamlining EU procedures and merging of PDO and PGI definitions</b></p>                               | <p>It would bring EU GI definition closer to TRIPS definition</p> <p>Would make easier negotiations with 3C on protection</p> <p>It would help providing consumers a clearer message on products' characteristics linked to geographical origin</p> | <p>Some MS strongly against. EESC against.</p> <p>Two different types of geographical origin (PDO-PGI) originally introduced to reflect existing national experiences=&gt;likely difficult implementation</p> <p>Inconsistent with recent graphic differentiation of PDO and PGI symbols</p> <p>Inconsistent with recent wine reform</p> <p>It would drive down the intensity of the link between product and geographical origin</p>                                  |
| <p><b>Option B2: Streamlining EU procedures and create single register (wine, spirits and agricultural products)</b></p> | <p>Ensure coherence among EU rules on protection of geographical names</p> <p>In line with better regulation and simplification</p> <p>A single register would be consumers –friendly and easy for operators and administration use</p>             | <p>Need for preserving some specificities of the 3 systems</p>   |

|  |  |  |
|--|--|--|
|  | <p>A single legal act and a single register would contribute to a better enforcement</p> <p>Majority of MS supports some sort of harmonisation, provided that specificities are respected</p> <p>Merging would support EC negotiation position in DDA on extension of protection beyond wines and spirits</p> <p>Opportunity to extend environmental concerns currently spelt out in wine regulation to agricultural products as well.</p> <p>Likely reduction of administrative burden regarding enforcement</p> <p>Synergies in registration procedure and information campaigns</p> |  |
| <p><b>Option B3: streamlining EU procedures and introduction of national systems of protection</b></p> | <p>Reduce Commission burden of approving names at EU level</p> <p>Possible reduction of administrative burden for small businesses producing “micro GIs”</p> <p>Possible positive effect on local employment</p> <p>Possibility - within the EU framework - to address at national level specific concerns (e.g. environmental)</p>  | <p>Could fragment the single market</p> <p>Current system was created to avoid recurrent problems related to non-harmonised national systems</p> <p>Definition of trade criteria would be difficult</p> <p>Risk of consumer confusion (proliferation of national logo)</p> <p>Solutions may increase control burdens</p> |
| <p><b>Option C: clarifying PDO/PGI rules</b></p>   | <p>Resolve current ambiguities</p> <p>Clarify demand for greater (indirect) control by producer groups</p> <p>In line with Commission declaration of 30.3.2006</p> <p>Supported by majority of MS</p> <p>Better market transparency and consumer information</p> <p>Improvement quality of applications</p>  | <p>Controversial issues: solutions not evident</p> <p>Certain solutions may increase administrative and control burdens.</p>   |



**Comparison of retained options by specific objectives**

| <i>Options</i><br><br><i>Objectives</i>  | <b>Option 0</b><br>status quo | <b>Option A</b><br>Replace geographical indications with trademark system   | <b>Option B</b> status quo plus (streamlining)  |   |   | <b>Option C</b><br>Clarification PDO/PGI rules                                 |
|--|-------------------------------|---|---|---|---|--|
|  |                               |   | <b>Option B.1</b><br>merger PDO/PGI definitions   | <b>Option B.2</b><br>merger wine, spirits and agricultural products | <b>Option B.3.</b><br>creation of national systems  |  |
| Ensure clearer information regarding the products specific characteristics linked to geographical origin. (see general objective and ) | <b>0</b>                      | -<br><br>As the TM system is not a specific instrument to transmit product characteristics linked to geographical origin  | -<br><br>As designation of origin is better known than geographical indication in some countries of the EU. | +<br><br>Consumer and producer would rely on a single set of rules  | -<br><br>Consumer would be further confused with the appearance of new national systems that would coexist with EU system   | +<br><br>As place of farming of raw materials would ensure clearer information |
| Ensure a single approach at EU level for GIs and simplify the Community schemes.   | <b>0</b>                      | -<br><br>On one hand the GI system would be simplified as it would disappear; on the other, in its present form, trademark legislation would not ensure commitments on level of protection for GI's. Finally, the TM solution would not ensure a single approach as to the 3C GI's protected through bilateral agreement. | -   | +<br><br>As the three existing systems would be simplified into one | --<br><br>As every MS would be able to create is own system, and the present single approach would disappear. Complexity with EU system, national or regional systems would increase, | <b>0</b>   |

|   |          |  |  |          |          |  |
|---|----------|--|--|----------|----------|--|
| Ensure uniform IP rights enforcement - throughout the EU.                           | <b>0</b> | -<br><br>As wine and spirits scope of protection would be different than agricultural products, enforcement might get more complex   | <b>0</b>   | +        | --       | ++<br><br>As clarifications would be introduced on the enforcement of protection, as well as on relation between potential conflicting rights. |
| Improve incomes of farmers and ensure that the system contributes to rural economy. | <b>0</b> | -<br><br>Delocalisation of a trademark is possible. Specifications needed in a GI system (but not a TM) may introduce rules on quality or process that contribute to maintain rural economy. | -<br><br>As some evidence shows that returns to farmer in PDO are higher than in PGI's | <b>0</b> | +        | <b>0</b><br><br>As multiplicity of ad-hoc systems may be created to valorise local productions   |
| Facilitate high level protection in third countries of EU geographical indications  | <b>0</b> | +  | +  | <b>0</b> | <b>0</b> | <b>0</b>   |
|   |          | In the case of individual applications, the system would better adapt to implementation of TRIPS provisions through trademarks systems   | As it would single GI definition, applying to all TRIPS members                        |          |          |  |

The comparison of options retained is made against the specific objectives. General objectives are not adequate to be used in that context as the policy on EU schemes of geographical indications is already in place, and the purpose of the present impact assessment is to analyse further recast and simplification. This is why the comparison of options has been made vis-à-vis the specific objectives defined under section 3.2.

Among the options retained, option B2 (Streamlining EU procedures and create single register (wine, spirits and agricultural products) and options C (clarifying PDO/PGI rules) show the highest objectives achievement.

The objective related to the protection of intellectual property rights of GI holders in third countries (objective e) is not achieved by any of the considered options.

### Summary of comparisons

#### **Comparison with effectiveness, efficiency and consistency (see Annex B, § B.6)**

| <i>Options</i><br><br><i>Objectives</i>  | <b>Option 0</b><br>status quo | <b>Option A</b><br>Replace geographical indications with trademark system | <b>Option B</b> status quo plus (streamlining)                 |   |   | <b>Option C</b><br>Clarification PDO/PGI rules         |
|--|-------------------------------|---|--|---|---|--|
|  |                               |   | <b>Option B.1</b><br>merger PDO/PGI definitions                | <b>Option B.2</b><br>merger wine, spirits and agricultural products   | <b>Option B.3</b><br>creation of national systems |  |
| <b>Effectiveness</b><br>(how well will it solve the problem?)                          | <b>0</b>                      | <b>0</b>  | —<br>Incoherent with recent creation of PDO/PGI in wine system | +<br>A higher coherence between the 3 systems; further simplification | —<br>Complexity will be increased                 | +<br>Better information to consumer; reduce complexity |
| <b>Efficiency</b><br>(is this the most we can get for the money?)                      | <b>0</b>                      | <b>0</b>  | <b>0</b>   | +<br>As cost advantages would be created of merging the 3 systems     | <b>0</b>  | <b>0</b>   |
| <b>Consistency</b><br>(is it in line with other Commission objectives and strategies?) | <b>0</b>                      | <b>0</b>  | <b>0</b>   | +<br>In line with simplification strategy                             | —<br>Against EU harmonised framework.             | +<br>Consistency with current legal frameworks         |

Option B2 (streamlining and merger wine, spirits and agri-products) and option C (clarification PDO/PGI rules) score the highest on effectiveness, efficiency and consistency.



## B.7. MONITORING AND EVALUATION

This impact assessment is in the context of setting out strategic orientations in a Communication, so in the immediate future, the test of progress will be whether or not these orientations are developed and adopted.

For the progress of policy itself the following core progress indicators are proposed provisionally and will be developed during preparation of each initiative:

| <b>Orientation</b>  | <b>Core progress indicators</b>   | <b>Monitoring and evaluation arrangements</b>  |
|---|---|--|
| Abolish <i>sui generis</i> system and replace by existing trademark system. | Asses the efficiency and effectiveness of the collective trademark system vis-à-vis certification trademark system. | Monitoring of legislation  |
|   | Preparation of trademark legislation modification   | Work plan to be proposed by the Commission   |
| Streamlining procedures combined with:                                      | Prepare modifications of legislation  | Work plan to be proposed by the Commission   |
|   | Speed up of internal procedures   | Annual data recorded by the commission.  |
| 1. Merging of PDO/PGI definitions   | Prepare modification of 2 legislations (wine and agricultural products)   | Work plan to be proposed by the Commission   |
| 2. Creation of single register for wine, spirits and agricultural products  | Preparation of new single framework regulation  | To commence after Lisbon Treaty ratified. Work plan to be proposed by the Commission |
|   |   | Commission single database   |
| 3. Creation of national systems   | Prepare modification of legislations  | Monitoring to be addressed by MS.  |
| Clarifying PDO/PGI rules  | Preparation of legislation modification   | Work plan to be proposed by the Commission   |
|   | Development and approval of guidelines with regulatory committees (3) and advisory groups (3)                       |  |
|   | Assess economic importance of GIs in marketplace  | External study on value and volume of PDO/PGI  |

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## ANNEX I

### INCREASING OR RETAINING ECONOMIC ACTIVITIES IN RURAL AREAS

Extract from the evaluation of PDO/PGI.

#### *Findings from the literature*

The magnitude of the effects will depend on the size of the production of the PDO/PGI product and its relative importance in the region, and the alternatives to the production of the PDO/PGI.

It is most likely that the regional economic development benefit of the scheme will be the greatest in regions with few, if any, alternatives to the production of the PDO/PGI. Typically, such regions are more remote from the main centres of economic activity and suffer from a lack of economic development opportunities.

In contrast, the PDO/PGI scheme is unlikely to have a major economic development impact if the production of the PDO/PGI is relative small scale and there are many alternative agricultural and/or non-agricultural economic opportunities in the region.

For example, Hauwuy et al. (2006), in a study of dairy production for cheese-making in the northern Alps, note how the existence of a geographical indication helps maintain a specialist agricultural sector through generation of price premiums for local milk and maintenance of skilled labour.

However, some authors question the direction of causality between PDOs/PGIs and economic benefits, arguing that PDOs/PGIs tend to appear in already prosperous regions rather than being a stimulus for development of less favoured regions. For example, in Italy, most PDOs are based in the northern developed regions (Tuscany, Emilia Romagna, etc).

If the PDO/PGI scheme is to retain and/or boost economic activities in rural areas, it must maintain or increase the revenues for the rural communities, including farmers. O'Connor & Co. (2006) highlight the success of the registration of 'Lentilles vertes du Puy' in France as a PDO in 1992 as having complemented local farmers' income, leading to growing production levels through to 2005. The density of lentil cultivation means that it yields twice as much crop as the same area of corn, bringing higher profitability. Based on data from the Centre of Rural Economy of the Haute-Loire, the authors state that, on average, the 'Lentilles vertes du Puy' provides its 850 growers with an additional €305 per month, representing an increase of 10-15% relative to average farming income in France.

Research by DG Joint Research Centre<sup>114</sup> identified impacts of the PDO/PGI scheme on rural development as including product differentiation and the contribution to competitiveness, extensive production, rural processing, protection of traditional production systems and ways of life and agro-tourism. However, the research also points to the protection of traditional

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<sup>114</sup> Summarised by: Hubertus Gay, S. and Gijbers, G. (2007) "Summary of case studies undertaken by the JRC", EC DG Joint Research Centre-IPTS and Innovation Policy Group TNO, Conference: "Food Quality Certification – Adding Value to Farm Produce", 5-6 February 2007.

methods as being a restraint on innovation. Several studies<sup>115</sup> support this analysis, highlighting the important role of GIs in the regeneration of the countryside, conservation of local plant varieties, rewarding local producers, supporting rural diversity and social cohesion, whilst promoting new job opportunities in production, processing and other related services.

In their review of the PDO/PGI regulation, Barjolle and Sylvander (2000) note the difficulty in evaluating the regulation's contribution towards the long-term objectives. But they also state that, for certain products of less-favoured regions, market success allows proper remuneration of labour-intensive small-scale or farm production, and farms in such regions would be less viable without this revenue.

Other research has pointed to the limitations of quality labels as a rural development tool, owing to the narrow distribution of the benefits resulting from the protection of geographic names. Callois (2004) finds that quality labels are “a very selfish way of development”,<sup>116</sup> as the rise in farmers’ income does not benefit the rural region as a whole.

Pacciani et al. (2001) argue that the economic contribution of PDO-type schemes depends on the type of strategy that local actors adopt and in particular on whether a ‘supply chain’ strategy or an ‘extended territorial strategy’ is used. In the former case, only producers and processors are involved in the certification and they tend to be the only ones that gain from the scheme. In the latter, a diversity of actors tends to be involved and the economic benefits of the scheme are shared within the local community.

Whatever the case, the statistics show that in certain cases, the economic contribution of PDO/PGI products is significant. For example, a study by INDICOD – Nomisma (2005) found that registered products (excluding wine) contributed over €3,1 billion at production and €8,6 billion at consumption to the Italian agri-food economy, or approx 7,2% of the agricultural added-value.

Many other researchers, including Belletti and Marescotti (2006), Ray (2002) and Rangnekar (2004), also highlight the important role of GIs in supporting rural development and preservation of socio-cultural aspects. In particular, they point to the contribution of GIs to the creation of social and cultural capital, and to the re-spatialisation and re-socialisation of food in the regions. The rural development potential of geographic products is linked, they argue, to the characteristics of these products produced in traditional, small-scale farms, in

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<sup>115</sup> EC DG Agriculture cite the following studies: Impact de l’utilisation d’une indication géographique sur l’agriculture et le développement rural (Fromage de Comté, France) – MAAPAR, 2003/2004; Geographic Indications in France – A dynamic sector of the Food Industry – Dupont ; High Quality Products and regional specialities: A promising trajectory for endogenous and sustainable development – Jan Douwe van der Ploeg; Geographical Indications and Rural Development in the EU – Carina Folkesson, Lund University. [http://ec.europa.eu/agriculture/publi/fact/quality/2007\\_en.pdf](http://ec.europa.eu/agriculture/publi/fact/quality/2007_en.pdf)

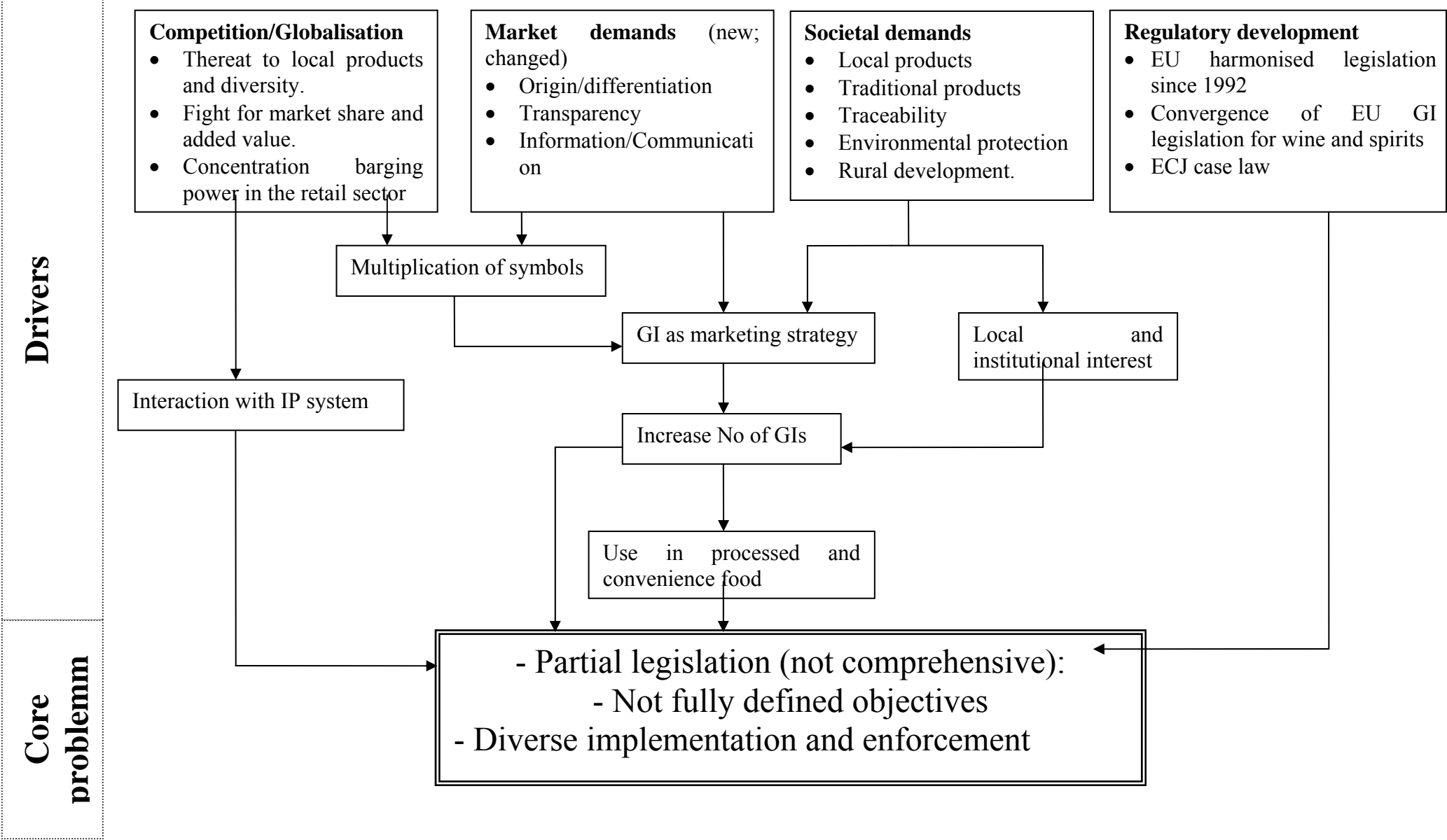
<sup>116</sup> Callois (2004), pp. 15.

traditional ways, in fragile and/or marginal rural areas; keeping alive these ‘traditional ways of living’ and traditional landscapes in marginal rural areas.

Other authors highlight the spillovers into adjacent economic activities in the region. The marketing of the region through one GI product can bring publicity to the region and reinforce the regional identity, fostering agri/cultural tourism, and so creating more job opportunities and increasing incomes through an indirect link with the original GI<sup>117</sup>.

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<sup>117</sup> Ray, 2002, pp. 12; Rangnekar, 2004, pp. 16-17.



**Drivers**

**Competition/Globalisation**

- Threat to local products and diversity.
- Fight for market share and added value.
- Concentration bargaining power in the retail sector

**Market demands (new; changed)**

- Origin/differentiation
- Transparency
- Information/Communication

**Societal demands**

- Local products
- Traditional products
- Traceability
- Environmental protection
- Rural development.

**Regulatory development**

- EU harmonised legislation since 1992
- Convergence of EU GI legislation for wine and spirits
- ECJ case law

Multiplication of symbols

GI as marketing strategy

Local and institutional interest

Interaction with IP system

Increase No of GIs

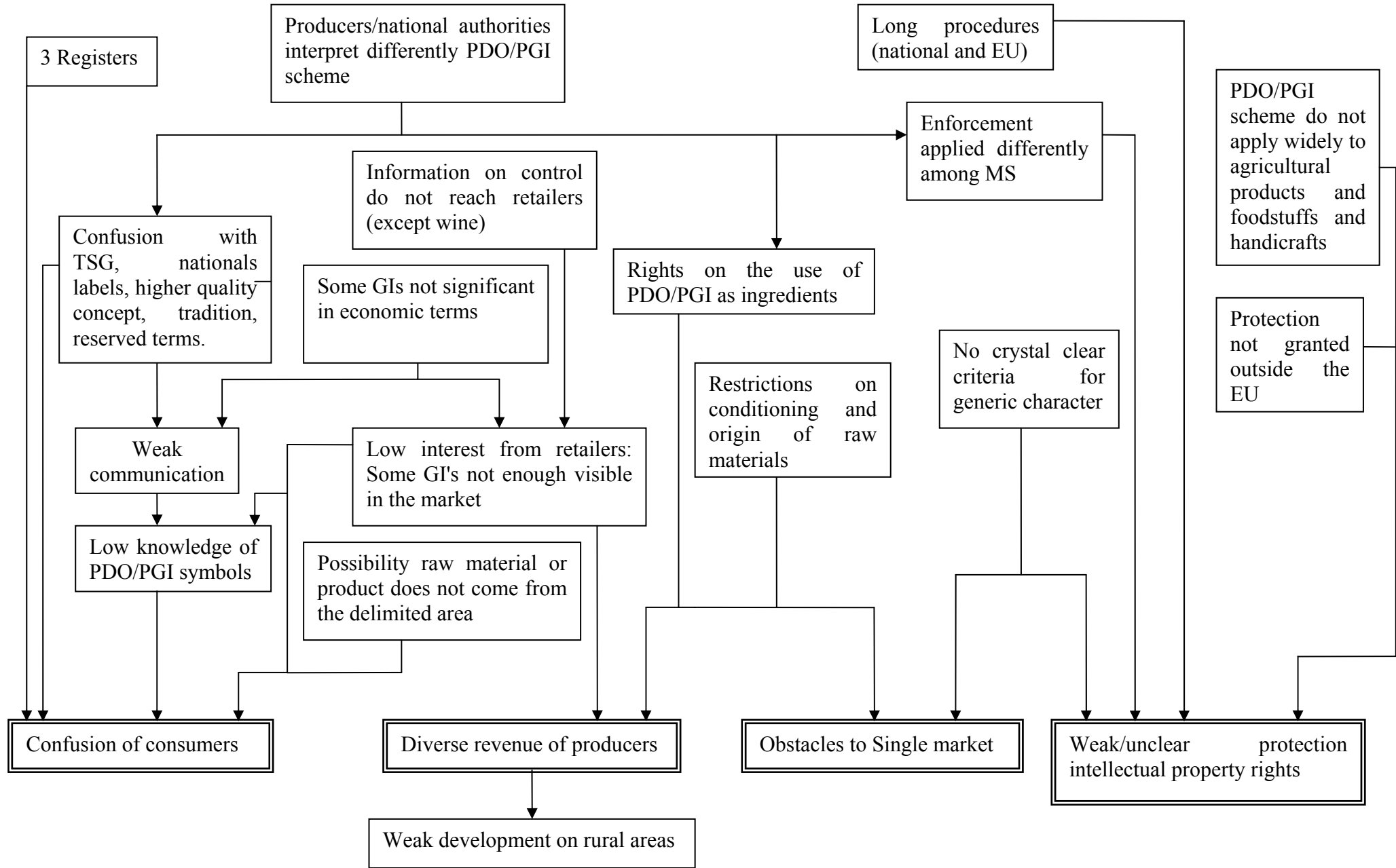
Use in processed and convenience food

- Partial legislation (not comprehensive):  
- Not fully defined objectives  
- Diverse implementation and enforcement

**Core problem**



**Effects of the problem**





### ANNEX III

#### SUMMARY OF ENVIRONMENTAL IMPACTS ON THE CASE STUDIES CONDUCTED IN IPDEV PROJECT

|                                      | Overall assessment   | Most important effects (positive/negative).   |
|--------------------------------------|--|---|
| Jersey Royal Potatoes (PDO)          | <p>Environmental effects: production has, overall, a positive effect in light of worse alternatives (land abandonment and rural decline), considering that there are no substitute crops of comparable economic viability (although diversification is being promoted). Problems came from intensification in the 1980s – with consequences for water pollution and soil erosion. All production now has to meet minimum Jersey environmental standards to receive a subsidy and the standards required by British retailers for export (99% of production). The quality of Jersey produce and the island countryside is now being promoted.</p> | <p>(-+) water: as Jersey is a small island, freshwater is a finite resource but rainfall is usually plentiful. There are occasional drought years when desalination for drinking water is necessary and the crop on the sandier west coast may be irrigated. But this is rare and relatively small-scale because most rain falls during the growing season.</p> <p>(-) medium/high fertiliser and pesticide input, although new practices have been introduced to reduce this: cover cropping that is ploughed back in, soil and disease analysis and monitoring, integrated crop management (compliance with Assured Food Standards, LEAF for export and Jersey Codes of Practice for subsidy). Risk of higher input use by small producers who do not export.</p> <p>(-+) Some soil erosion due to loss of some boundaries and cultivation on slopes. Use of cover crop and seaweed to add texture and programmes to replace boundaries.</p> <p>(+) Contribution to landscape maintenance. Jersey Royal Potato growing has defined the Jersey landscape for 200 years.</p> <p>(+) Biodiversity: field boundaries, where maintained, provide habitat and wildlife corridor. Jersey Royal is indigenous. Cover crops for 8 months of the year provide important habitat for birds, invertebrates. Key that Jersey Royal has very short winter/spring growing season.</p> <p>(+) Some organic production and likely to increase with UK consumer demand as new premium market.</p> <p>(+) No GMO varieties</p> |
| West Country Farmhouse Cheddar (PDO) | <p>Dairy farming to produce West Country Farmhouse cheddar has, overall, a positive effect in light of worse alternatives (loss of permanent grassland through land abandonment, conversion to arable farming where unsuited to the land, development). Helps conserve traditional landscape, knowledge and methods. Highly integrated production system. Farmers strive to maximise milk output but</p>   | <p>(+ -) although water use is quite high in dairy farming and overall demand is increasing in the area, water is plentiful and the traditional, highly integrated production methods are likely to reduce need.</p> <p>(+ -) water quality: medium-high fertiliser input, but risk of diffuse pollution lesser than for alternative land uses where these are unsuited to the soil type. Producers follow certified schemes, which reduce pollution risk. Some production is conservation grade or organic and this is likely to increase.</p> <p>(+) soil: regional poor soil structure and heavy rain creates risk of water pollution where land use is</p>  |

|   |  |  |
|---|--|--|
|   | <p>PDO cheese production linked to producer interest in conservation, animal welfare, organic production, other traditional products.</p>  | <p>inappropriate. PDO maintains dairy farming and is likely to permit correct stocking rates and grazing intensity, helping conserve local grassland, hedgerows and trees.</p> <p>(+) Contribution to traditional landscape and land-type maintenance.</p> <p>(+ -) Biodiversity: maintenance of indigenous grass species, and wildlife in hedgerows and woodland.</p> <p>(+ -) Energy/Waste – because of highly integrated, traditional production, this is reduced compared with industrial cheddar making (e.g. reduced transport, plastic packaging, energy for pasteurisation in some cases).</p> |
| <p>Spreewald gherkin (PGI)</p>                              | <p>Environmental effects ambiguous – positive and negative impacts can be identified, weighting not possible. Intensive farming practices for cucumber production, but negligible share of total agricultural area is concerned.</p>   | <p>no organic production, but integrated production is mandatory</p> <p>(-) high water demand (but modern and efficient irrigation techniques)</p> <p>(-) high fertiliser input, use of fungicides and insecticides</p> <p>(+) mostly short transport distances – regionalised production cycle</p> <p>(+) contribution to landscape maintenance</p>   |
| <p>Schwäbisch-Hällisches Qualitätsschweinefleisch (PGI)</p> | <p>Pig keeping according to production guidelines is clearly beneficial compared to conventional/industrial pork production. Organic branch exists.</p> <p>Environmentally compatible production is declared aim of the producers' group; group is involved in environmental projects.</p> | <p>(+ compared to standard pork) reduced pressure on water and soil due to limited livestock density and regionalised production process</p> <p>(+) re-establishment of endangered breed benefits agro-biodiversity</p> <p>(+ compared to standard pork) reduced energy demand due to short transport distances and special pig housing facilities</p>   |
| <p>Diepholzer Moorschnucke (PDO)</p>                        | <p>Clearly beneficial – conservation of landscape is major aim of the activity. No negative impacts on environment, preferable to alternative agricultural and livestock management practices. Unique, close relationship between sheep and habitat.</p>                                   | <p>(+) regeneration and conservation of moorlands (under supervision of environmental NGO)</p> <p>(+) no or very little fertiliser and plant protection products</p> <p>(+) sheep grazing contributes to favourable nutrient balance and maintaining nutrient-poor soil conditions</p> <p>(+) maintenance of habitat for many rare and endangered species</p> <p>(+) re-establishment of endangered breed benefits agro-biodiversity</p>   |

|                         |   |  |
|-------------------------|---|--|
|                         |   | (+) low energy input, short transport distances  |
| Idiazábal (PDO)         | Extensive system of production lessens the impact on the environment. Traditional activity has shaped landscapes (highland pastures). PDO qualified sheep -Latxa and Carranzana-: autochthonous sheep.  | <p>There are two organic cheese producers within the PDO (one experimental farm). Extensive model of production which competes with more intensive models (caw milk).</p> <p>(+) Environmental impacts are low.</p> <p>(+) Contribution to landscape maintenance. Landscapes are often described as “semi natural” due to repetitive, seasonal grazing of transhumant flocks.</p> <p>(+) Biodiversity: preservation of autochthonous (not highly productive in terms of quantities produced) sheep. Latxa and Carranzana (Carranzana in danger).</p> <p>(+) Biodiversity: creation of diverse habitats in mountains –mosaics-.</p>   |
| Arroz de Valencia (PDO) | The area is a wetland, protected under national, international and EC regulations. Conserving rice activity is said important to preserve wetland habitats (recognised by Rural Development EC rules). Producers committing to the preservation of “traditional” rice production receive economic aids. (+++) | <p>There are no organic producers. The production being a Natural Park, there are constrictions as to agrochemicals, construction of new facilities, and conversion of rice fields to other productions.</p> <p>(+) Water availability: Rice-paddies are the only agricultural activity which do not imply drying lands out –agricultural alternative land uses are prohibited. High levels of water management, but preserving wetland characteristics.</p> <p>(+) Soil erosion is low. Floods guarantee permanent input of sediments (loam).</p> <p>(+) Rice paddies are part of the landscape, and has been for centuries.</p> <p>(+) Biodiversity: The area is of enormous importance for migrating/ water birds. Rice fields provide, shelter, food and water.</p> <p>(+) PDO contribution: technical cooperation for rational use of inputs and agricultural practices. Valorisation of an environmentally important production.</p> <p>(+/-) use of herbicides and insecticides exist, but are rationalised. Integrated systems are promoted by administration with the aid of RCAV (see, for example, pheromone treatment for borer plague..</p> <p>(-)Water and soil contamination: eutrophication resulting from waste waters of populated neighbouring areas. High organic presence in water reduces fertiliser input inputs in rice. Loams in certain area register presence of contaminating agents.</p> <p>(-) Siltation (natural and man provoked).</p> |

|              |        |   |   |
|--------------|--------|---|---|
|              |        |   | (-) Air: rice hay which cannot be recycled is burnt.  |
| Sierra (PDO) | Mágina | <p>Environmental effects: olive oil production has, overall, a positive effect</p> <p>facing worst alternatives (land abandonment and desertification), considering that reforestation is difficult. Worst problems are intensification –with consequences on water use, pollution and soil erosion-) RCPDO contributes</p> <p>in conserving traditional methods, limiting –somewhat-pressures for intensiveness and giving technical cooperation for ex: orienting production towards more integrated systems.</p> | <p>There a are few organic oil producers within the PDO, but successful (Trujal de Sierra Mágina). Integrated production is not mandatory, but methods which are recommended by the RCSM bring production close to integrated production standards.</p> <p>(-) increasing water demand (since irrigation augments productivity).</p> <p>(-) medium/high fertiliser input, use of herbicides and insecticides.</p> <p>(-+) Soil erosion is generally high, due to labour in slopes. Application of natural covers (information and cooperation granted, among others by RCSM), reduces this problem.</p> <p>(-+) Water wastes: Expansion of the use of two phase decanters, replacing three phase decanters, reduce water wastes –vegetative waters-.</p> <p>(+) contribution to landscape maintenance. Olive groves have occupied the scenes of Jaén and Córdoba slopes. Olive trees are a part of traditional landscapes.</p> <p>(+) Biodiversity: Olive groves provide habitats and food for several species of insects and larger animals.</p> <p>(-) Biodiversity: despite the richness and varieties of olive trees, PDO favour the protection of the varieties with good properties for oil production (Piqual, in the case of Sierra Mágina).</p> <p>(-) Some studies mention that only organic olive oil production is sustainable (only two oil mill/cooperatives). Intensified traditional such as Sierra Mágina groves, although less harmful than completely intensive groves, are not sustainable.</p> |

Source: IPDEV – summary of case studies.

## ANNEX IV

### THE ECONOMIC ANALYSIS OF THE VALUE CHAIN

Extract from the "Case studies 8. *Parmigiano Reggiano* - 30/11/06" DG JRC/IPTS<sup>118</sup>

Some of the key data concerning the Parmigiano Reggiano (PR) supply chain, are reported in table 1 below, together with the corresponding data concerning Grana Padano (GP). The objective of the table is to resume the data on average per unit revenues and costs of the main actors of the supply chain (farmers, processors, agers/traders/wholesalers, retailers), in order to clarify how rents are allocated along the chain. The only actors experiencing negative profits in the last four years are the PR farmers delivering to private dairies. The size of this negative per-unit profits crucially depends on the level of the raw milk price, which tends to fluctuate quite strongly. In 2002, when the raw milk price was at its highest point, profits were very closed to 0, while in 2005 the drop in milk price generated a strong negative profit. These negative profits do not necessarily imply dangers for the farms involved, since family farms still provide most of the labour needed for milk production, and negative profits simply imply that this labour is paid at a lower rate as compared to the standard salaries. However, this remains a problem for the PR supply chain, since farmers producing milk for GP can experience positive profits, at least in some years, thanks to their lower average milk production costs.

The situation of PR farmers delivering to coops is slightly different. If we use private dairies' profits as proxy of coops' net revenues, these revenues make farmers' profits positive in all years, ranging from 2 to 16% of milk sales. However, this calculation does not take into account the fact that coops pay milk to farmers up to 24 months after delivery, in case they carry out also the ripening phase. This of course means that farmers have to bear the additional cost of financial exposition.

All the other actors of the chain (private processors, agers/traders/wholesalers, retailers) experience positive profits in all the years considered in this analysis, although the size of this profits tend to fluctuate quite strongly, given the cyclical behaviour of both the milk and the cheese prices. In general, however, the incidence of profits on sales tends to be substantially larger for retailers (ranging from 15 to 30%) and also for PR processors (from 13 to 32%, except in 2002), which have recently benefited from the strong negative raw milk price trend. GP processors, as well as agents/traders (which normally act in both PR and GP supply chains), experience profit margins ranging from 2 to 7% of their sales depending on the year.

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<sup>118</sup> [http://ec.europa.eu/agriculture/quality/certification/docs/case8\\_en.pdf](http://ec.europa.eu/agriculture/quality/certification/docs/case8_en.pdf).

**Table 1: Value added and profits at different stages of the Parmigiano Reggiano and Grana Padano supply chain**

|  | Parmigiano-Reggiano (PR) |       |       |       | Grana Padano (GP) |       |       |       |
|--|--------------------------|-------|-------|-------|-------------------|-------|-------|-------|
|  | 2001                     | 2002  | 2003  | 2004  | 2001              | 2002  | 2003  | 2004  |
| <i>Farm level (€/100 kg of milk)</i>                               |                          |       |       |       |                   |       |       |       |
| Milk price*  | 45.97                    | 51.05 | 44.86 | 37.40 | 40.57             | 37.50 | 39.77 | 38.66 |
| Total farm revenue (milk+meat+others)                              | 48.04                    | 53.98 | 46.63 | 40.40 | 43.67             | 41.79 | 43.70 | 43.46 |
| Milk production costs  | 55.34                    | 54.27 | 54.50 | 52.58 | 44.59             | 43.32 | 41.70 | 41.18 |
| Profits  | -7.30                    | -0.29 | -7.88 | -     | -0.92             | -1.53 | 2.00  | 2.28  |
|  |                          |       |       | 12.18 |                   |       |       |       |
| <i>Processing level (€/kg of cheese)</i>                           |                          |       |       |       |                   |       |       |       |
| Cheese wholesale price (PR 12 months aged; GP 9 months aged)       | 8.13                     | 8.05  | 8.97  | 8.51  | 6.10              | 5.65  | 6.09  | 5.88  |
| Processing costs   | 0.15                     | 0.15  | 0.15  | 0.16  | 0.12              | 0.12  | 0.12  | 0.12  |
| Cost of raw material (15 kg of milk for PR – 14 kg of milk for GP) | 6.89                     | 7.66  | 6.73  | 5.61  | 5.68              | 5.25  | 5.57  | 5.41  |
| Value added  | 1.23                     | 0.39  | 2.24  | 2.90  | 0.42              | 0.40  | 0.52  | 0.47  |
| Profit   | 1.08                     | 0.23  | 2.08  | 2.74  | 0.31              | 0.28  | 0.40  | 0.35  |
| <i>Agers/traders/wholesalers level (€/kg of cheese)</i>            |                          |       |       |       |                   |       |       |       |
| Cheese wholesale price (PR 24 months aged; GP 18 months aged)**    | 9.08                     | 9.08  | 10.12 | 9.83  | 6.49              | 6.09  | 6.55  | 6.31  |
| Ageing costs   | 0.27                     | 0.44  | 0.64  | 0.67  | 0.14              | 0.21  | 0.29  | 0.31  |
| Cost of raw material (PR 12 months aged; GP 9 months aged)         | 8.13                     | 8.05  | 8.97  | 8.51  | 6.10              | 5.65  | 6.09  | 5.88  |
| Value added  | 0.95                     | 1.03  | 1.15  | 1.32  | 0.39              | 0.44  | 0.46  | 0.42  |
| Profit   | 0.68                     | 0.59  | 0.51  | 0.66  | 0.26              | 0.23  | 0.17  | 0.12  |
| <i>Retailers level (€/kg of cheese)</i>                            |                          |       |       |       |                   |       |       |       |
| Cheese retail price  | 13.20                    | 13.23 | 13.63 | 14.11 | 9.80              | 9.63  | 9.74  | 9.75  |
| Retailing costs (estimated)  | 1.05                     | 1.05  | 1.10  | 1.10  | 1.05              | 1.05  | 1.10  | 1.10  |
| Cheese wholesale price (PR 24 months aged; GP 18 months aged)***   | 9.05                     | 9.00  | 10.16 | 9.78  | 6.39              | 5.93  | 6.33  | 6.00  |
| Value added  | 4.15                     | 4.22  | 3.47  | 4.33  | 3.41              | 3.70  | 3.41  | 3.75  |
| Profit   | 3.10                     | 3.17  | 2.37  | 3.23  | 2.36              | 2.65  | 2.31  | 2.65  |
| <i>Distribution of valued added among agents</i>                   |                          |       |       |       |                   |       |       |       |
| Processors (%)   | 19.5                     | 6.9   | 32.6  | 33.9  | 10.0              | 8.8   | 11.8  | 10.1  |
| Agers/traders/wholesalers (%)                                      | 15.0                     | 18.3  | 16.7  | 15.5  | 9.3               | 9.7   | 10.4  | 9.2   |
| Retailers (%)  | 65.5                     | 74.9  | 50.6  | 50.6  | 80.7              | 81.6  | 77.7  | 80.7  |
| <i>Incidence of profits on sales</i>                               |                          |       |       |       |                   |       |       |       |
| Farmers (%)  | -15.2                    | -0.5  | -16.9 | -30.2 | -2.1              | -3.7  | 4.6   | 5.2   |
| Processors (%)   | 13.3                     | 2.9   | 23.2  | 32.2  | 5.0               | 5.0   | 6.6   | 6.0   |
| Agers/traders/wholesalers (%)                                      | 7.5                      | 6.5   | 5.1   | 6.7%  | 4.0%              | 3.8%  | 2.5%  | 1.9%  |
| Retailers (%)  | 23.5                     | 24.0  | 17.4  | 22.9  | 24.1              | 27.5  | 23.7  | 27.2  |

Source: author's calculation on data from various sources.

\* Price paid by private processors (cooperatives excluded)

\*\* Weighted average of wholesale domestic price and export price

\*\*\* Wholesale domestic price only (foodservice and food industry uses are excluded)



Another important element to judge how rents are allocated along the chain is the distribution of the value added. There is no doubt that retailers are producing the highest share of the total value added of the cheese supply chain: from 50 to 75% of the total for PR and around 80% for GP. This is mainly due to the high margin that retailers can enjoy in terms of differences between retail and wholesale cheese prices. Processors and agers/traders produce the remaining share, which may reach 30% for PR processors (9-10% for GP) and 15-18% for PR traders (9-10% for GP).

These data, together with those on profits, confirm the perception of all the operators of the chain, that the increasing bargaining power of modern retailers is shifting toward them the benefits of the PR and GP Quality Assurance Schemes. These considerations are of course based on the fact that a highly concentrated retail sector can exert its oligopsony<sup>119</sup> power on a highly fragmented supply chain, with 5000 PR farmers, more than 500 PR processors and 70-90 traders/wholesalers that act in both the PR and GP chains. Moreover, in a situation in which very few firms are able to implement their own brand policies in the final market, retailers become also the main players in the grana cheese marketing strategies, both in terms of product differentiation (through different types of products like vacuum packed pieces, snacks and grated cheese, but also through their own Private Label brand policies) and in terms of pricing and promotions (big discounts, below-cost sales,...).

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<sup>119</sup> An oligopsony is a market form in which the number of buyers is small while the number of sellers in theory could be large. It is a form of imperfect competition. The buyers have a major advantage over the sellers. They can play off one supplier against another, thus lowering their costs. They can also dictate exact specifications to suppliers, for delivery schedules, quality, and varieties. They also pass off much of the risks of overproduction, natural losses, and variations in cyclical demand to the suppliers.

## ANNEX V

### PRIOR USES, OBJECTIONS AND OUTCOMES

The first table below summarises the position for the most simple case, that is a prior use in the same name as that proposed for registration as a PDO/PGI (e.g. Feta / Feta PDO), or the PDO/PGI contains an exact part of the prior use (e.g. British Sherry / Sherry PDO). In either case, if *exclusive* protection is given to the registered PDO/PGI, the prior use cannot continue.

The second table examines the circumstance, which is more common, where the prior use is in a different name that would (normally) be covered by the protection of a registered PDO/PGI, for example a translation or evocation of the PDO/PGI name (e.g. Bavaria / Bayerischer PGI), or the PDO/PGI includes a part of the prior use (e.g. Cheddar / West Country Farmhouse Cheddar PDO).

*Table 1: Prior use in the same name as that proposed for registration as a PDO/PGI, or the proposed PDO/PGI contains an exact part of the prior use*

| Prior use  | Ground for objection under Article 7   | Potential outcome  | Comment  |
|--|--|--|--|
| Plant variety (registered in Angers CPVO; registered at MS level; traditionally used)<br>and<br>Animal breed (no EU herdbooks exist; in MS herdbook or traditionally used) | Art. 7(3)(b): registration would be contrary to Art 3(2): "a name may not be registered where it conflicts with the name of a plant variety ... and as a result is likely to cause consumer confusion" | (1) rejection of the PDO/PGI<br><br>(2) conflict or consumer confusion not judged to be significant, and PDO/PGI is registered   | (1) Plant variety name continues<br><br>(2) unclear whether or not the plant varietal/breed name can continue to be used to market product of the variety which does not correspond with the PDO/PGI.                  |
| Name is wholly or partly homonymous with a name already registered as a PDO/PGI  | Art. 7(3)(b): registration would be contrary to Art 3(3) which lays down rules on homonymity   | (1) (normally) new PDO/PGI is registered.<br><br>(2) exceptionally, if the proposed PDO/PGI would mislead consumers as to origin of that product, registration is rejected.  | (1) Art. 3(3) lays down conditions for use of the two names (ensure distinction between names)<br><br>(2) only original PDO/PGI name may continue..  |
| Prior trademark  | Art. 7(3)(b): registration would be contrary to Art 3(4) which provides that registration of a PDO/PGI shall be refused if a prior trademark has a certain reputation.                                 | (1) if registration of the PDO/PGI would confuse consumers as to its origin by reason of a prior trademark's renown, reputation and long use, PDO/PGI is rejected.<br><br>(2) if trademark does not have the above consumer recognition, | (1) In that case the result would be that only the trademark may continue to be used<br><br>(2) Under Art. 14(2) the trademark may 'coexist' (see box on 'trademark coexistence')<br><br><i>Note: under neither of</i> |

|                |  |  |   |
|----------------|--|--|---|
|                | <p><i>or</i></p> <p>Art. 7(3)(c): registration would jeopardise the existence of an entirely or partly identical... trademark</p>  | <p>the PDO/PGI is registered</p>   | <p><i>these outcomes is the existence of the prior trademark 'jeopardised', which renders the provision of Art. 7(3)(c) to have no apparent effect.</i></p>   |
| Prior name     | <p>Art. 7(3)(c): registration would jeopardise the existence of an entirely or partly identical... name.</p> <p><i>'name' presumably does not refer to a 'trademark' as that is listed separately. But it could refer to other types of IPR (such as plant variety) or any other usage, such as generic usage.</i></p> | <p>(1) if the name is not covered by any other provision (plant variety, generic,...), the PDO/PGI is registered.</p> <p>(2) if the name is covered by any other provision (plant variety, generic,...), see consequence under that heading...</p> | <p>(1) the prior use of the name must cease.</p> <p>(2) this overlapping presents a lack of clarity.</p>  |
| Prior products | <p>Art. 7(3)(c): registration would jeopardise the existence of products which have been on the market for at least 5 years.</p>   | <p>(1) the PDO/PGI would be registered, but the product (possibly under a different name) could continue to be produced and placed on the market.</p>  | <p>It is difficult to see how the protection of a PDO/PGI could jeopardise the existence of a <i>product</i> as distinct from a name, since the product could continue to be made (neither the ingredients nor production method nor recipe are protected) and placed on the market, albeit under a different name.<sup>120</sup></p> |
| generic        | <p>Art. 7(3)(d): under Art 3(1) names that have become generic may not be registered.</p>  | <p>(1) the name is found to be generic in the EU or in a single Member State: no registration of the PDO/PGI.</p> <p>(2) the name is found to not be generic: the name can be registered as PDO/PGI.</p>   | <p>(1) generic usage continues</p> <p>(2) Prior uses (which have been found to not be generic) will have to cease.</p>  |

<sup>120</sup>

A producer may argue (with reason) that without the name, the product loses its commercial value and hence the product itself is threatened. However, even in this case, the reference to "product" does not seem to add any ground that is not covered by the reference to "name".

*Table 2: prior use is in a different name, for example a translation or evocation of the PDO/PGI name, or the PDO/PGI includes a part of the prior use.*

| Type of prior use  | Ground for objection under Article 7   | Potential outcome   | Comment  |
|--|--|---|--|
| Plant variety (registered in Angers CPVO; registered at MS level; traditionally used)<br>and<br>Animal breed (no EU herdbooks exist; in MS herdbook or traditionally used) | Art. 7(3)(b): registration would be contrary to Art 3(2): "a name may not be registered where it conflicts with the name of a plant variety ... and as a result is likely to cause consumer confusion" | (1) the proposed PDO/PGI by reason of its difference from the prior name is most likely to not cause consumer confusion: the PDO/PGI will normally be registered. | (1) unclear whether or not the plant varietal/breed name can continue to be used to market product of the variety which does not correspond with the PDO/PGI.  |
| Name is partly homonymous with a name already registered as a PDO/PGI  | Art. 7(3)(b): registration would be contrary to Art 3(3) which lays down rules on homonymity   | (1) in all practical cases, a partly homonymous PDO/PGI is registered.  | (1) Art. 3(3) lays down conditions for use of the two names (ensure distinction between names)   |
| Prior trademark  | As above   | As above  | As above   |
| Prior name   | As above   | As above  | As above   |
| Prior products   | As above   | As above  | As above   |
| Generic  | Art. 7(3)(d): under Art. 3(1) names that have become generic may not be registered.  | (1) As Art. 3(1) only refers to the same name this ground does not apply and no objection can succeed for a different name.                                       | (1) notwithstanding that the objection could not be considered, the protection of the registered PDO/PGI will probably prevent the generic use, unless a common right to use a generic can be derived. Position not clear. |

## ANNEX VI

### COST OF PDO/PGI SCHEME

There is no comprehensive data available on the costs of preparing and running a PDO/PGI scheme. The reason is that it is very difficult to aggregate data referring to diversity of products or diversity of Member states. Member States implement the scheme, including monitoring and enforcement in a very diverse way. The scheme applies to very diverse kind of products, from industrial one like beers to raw materials like cereals. Concerns of commercial confidentiality from operators are among the reasons. However, information included in certain studies could provide interesting indications.

#### 1. Cost of preparing application

In general it can be observed that these costs vary according to a number of factors, *inter alia*: earlier availability of relevant documentation, reliance on in-house drafting/research competences, possible gathering of scientific evidences about products' chemical/microbiological characteristics, support from local /regional authorities in the first phases of the process. Some producer groups mentioned €3 000 and 5 000.

Although a membership to a producer group is deemed to be voluntary, cost of joining it should also be mentioned. Membership fees can be established according to different criteria: fixed annual fee and/or variable part depending on volume of production. Membership fees can include the cost of certifications (like in some Italian PDO/PGIs).

#### 2. Costs of administration at national level

In the majority of MS the costs stemming from the registration procedure are borne by public authorities. Cost may vary according, *inter alia*, the number of activities carried out by public authorities: assistance, promotion, etc. The level and concrete administrative structure of Member States may also affect costs: the number of procedural steps at national level/regional level can affect the timeframe and thus costs.

In one Member State the regional structure (Wallonia) did evaluate cost of application process, including objection process up to 10.000 € per application. UK also provided similar figures taking into account the shared competences between DEFRA and Food for Britain, on the basis of a average application request of 10 per year. A Member State is planning to conduct a survey on cost of application process.

In general Member States do not charge any fee for application procedure. Nevertheless, some Member States charge a fee to cover their costs, including those incurred in scrutinising application for registrations, statements of objections, applications for amendments and request for cancellation. According to the PDO/PGI Evaluation Germany charges 900 € for a 4 page application and in Hungary the fee for a PDO/PGI application amounts to 430 €.

#### 3. Cost of registration at EU level

The Community phase of the registration procedure does not provide for a Community fee payment. Costs are due to full time equivalent (FTE) staff assigned to scrutinise applications and interact with MS and translations in all EC official languages in view of publication in the Official Journal. In case of objection the cost would be increased.

#### **4. Certification costs for producers**

The cost of certification depends on the type of body that is carrying the control (private, public) the type of product (for example seasonal), on the degree of requirement established in the specification, on the average of inspection visits, etc.

Cost of certification can be charged an annual fee or depend on volume. Findings in literature show that in some cases the "consorzio" negotiates with the certification body fees for all the operators (independently to the fact they are members of the consorzio). In other cases the cost of certification is covered totally by local authorities.

Finally in some cases, public authorities do carry out the control, and do not charge the operator.

As examples, 0.3 €/Kg is mentioned for cheese, €0.24 per chicken and 0.75€/ton mentioned for rice. Estimation based on data given by producers places certification costs at between 3.7% and 4.3% of the final cost including financial and transport cost.

#### **5. Administrative burden for producers**

Concerning the administrative burden there is very different views. In general, producers do not consider administrative cost to be a burden and they are not generally mentioned. Some of them consider a PDO/PGI scheme does not add any additional administrative burden to their routine responsibility. Preparation of documents and preparation of controls are not considered a major cost.

Nevertheless, some Greek producers expressed strong concerns on the issue during the PDO/PGI Survey carried out in 2007 (see annex E). It was mentioned also for France that the 3 controls made annually were imposing a heavy burden. In France too, a producer group evaluated the administrative cost to 4% of the working time of farmers.

#### **6. Administrative burden on monitoring and enforcement**

It is difficult to evaluate enforcement of the protection provided by PDO/PGI, as the role is often distributed between central and regional administrations (Germany, Spain), or shared competences between several administrations (INAO/DGCCRF in France). It can also be integrated with food law controls or be responsibility of agencies/bodies such as Trading standards (UK).