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**COMMISSION STAFF WORKING PAPER**

**IMPACT ASSESSMENT  
ON GEOGRAPHICAL INDICATIONS**

**Accompanying document to the**

**Proposal for a Regulation of the European Parliament and of the Council on  
agricultural product quality schemes**

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This Impact Assessment provides analysis to support a review of the policy on geographical indications. A Communication scheduled for December 2010 will contain legislative proposals, including for geographical indications.

The "Geographical Indication" is a type of intellectual property right that may apply to all kinds of goods. The substance of the concept is that a geographical indication 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.

The first regulation on geographical indications was adopted in the European Union in 1992, to harmonise diverse protection instruments existing in some Member States and to create a system of registration and protection of names compatible with the single market. The GI system as a tool to encourage production of quality products linked to *terroir* was also seen to contribute to policy for development of rural areas.

The aim of geographical indications policy is two-fold. First of all it permits farmers and producers to give information to consumers on the quality of the product linked to its origin. The main instrument to assist this communication is a logo and the acronyms "PDO" and "PGI". Secondly, the scheme provides intellectual property protection to names complying with the definition and rules of the policy. This guarantees to consumers that the protected name is only used by the producers and operators respecting the rules of production of the good.

The implementation of the policy has overall been a success. In 2008, the same principles for registration and protection of geographical indications at EU level were adopted for the wine and spirit sectors. Since 1992, more than 900 names have been registered for agricultural products and foodstuffs and systems for wine and spirits drinks ensure protection for 1800 and 323 names respectively. In 2008, the value of geographical indications schemes for agricultural products and foodstuffs at wholesale stage was 14.5 billion €.

As noted by Council in 2006, and backed by the majority of stakeholders, the scheme on geographical indication is overdue for policy review.

## 1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

Lead DG:

- DG Agriculture and Rural Development (AGRI)

Other services involved:

- SG, SJ, ENV, ENTR, TRADE, MARE, REGIO, SANCO, MARKT, RTD, COMP, DEV, ECFIN, TAXUD

Agenda Planning references:

- Ref. 2010/AGRI/010

The work on the Impact Assessment on geographical indications was conducted by an Inter-service steering Group made up of representatives of interested Directorates General and Commission Services.

Before and during the Impact Assessment process, stakeholders were consulted extensively, as summarised below. The Impact assessment also refers to the *Evaluation of PDO/PGI Policy (2008)* conducted by *London Economics* at the request of DG-AGRI, and other literature including EU-financed research projects.

### 1.1. Inter-service Steering group (ISG)

Work on the IA was carried out from October 2009 to June 2010, during which an ISG met 3 times. Representatives of 12 Directorates General and Commission Services participated in the group.

The content of this impact assessment report has been developed and improved with the contributions, criticisms and comments of the services that participated actively to this ISG.

### 1.2. Consultation of stakeholders

The work presented in this Impact Assessment is the result of several years of consultations of institutional and non-institutional stakeholders in the field of quality policy for agricultural products.

- In 2004 the European Parliament (EP) funded a **pilot project** on ‘quality assurance and certification schemes for integrated supply chain management and the opportunity of a Community legal framework for protection of such schemes’. The pilot project was based on a set of specific studies and a consultation of stakeholders' representatives<sup>1</sup>. In this framework, the European Commission (DG JRC/IPTS in collaboration with DG AGRI) organised a **Stakeholder Hearing** on 11/12 May 2006 in Brussels. The Hearing was conducted on the basis of a set of panels, each one representing a given stakeholder category: farmers/producers, traders, food processors, certification bodies, catering and retailers, as well as consumers.

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<sup>1</sup> <http://foodqualityschemes.jrc.ec.europa.eu/en/index.html>

Information on the whole pilot project, including case studies is available on the DG AGRI website<sup>2</sup>.

- A conference entitled ‘**Food quality certification schemes: adding value to farm produce**’ was organised by the Commission on 5-6.2.2007. Four workshops relating to different aspects of Food Quality Certification schemes as well as a plenary session were organised. The main conclusions of this conference are available on the DG AGRI website<sup>3</sup>.
- A **survey** to producer groups (online questionnaire) of geographical indications (PDO, PGI) (except wines and spirits) was organised in 2007 by DG AGRI. It was intended to evaluate the socio-economic impacts of registration under EU quality schemes.
- Following a declaration<sup>4</sup> of the Commission on the PDO-PGI Regulation **policy review** Member States, were consulted in October and November 2006 on the aspects of the policy needing a review. A seminar meeting with some Member States and stakeholders was organised by Swedish national authorities on 2.10.2007. Discussions took also place in the Standing Committee on geographical indications and designation of origin and in the Advisory Group on Quality of Agriculture Production.
- The Commission participated in Round Tables organised by stakeholders (*O'Connor* and *Insight*) between March and July 2007 on the key issues mentioned in the declaration (ingredients, PDO and PGI logos, and packaging in the area).
- A wide on line Stakeholder consultation (15.10.2008 until 31.12.2008) covering all aspects of the quality policy took place through a Green Paper on agricultural product quality policy. A chapter on geographical indications described the situation and raised 6 open questions. More than 500 contributions were received. The feedback of the Green paper consultation was provided by means of the summary report published mid-March 2009.<sup>5</sup> Annex X presents a summary of views of stakeholders on geographical indication.
- In order to close the Green Paper consultation process, a **high-level conference on the future of agricultural product quality policy** organised by the Czech presidency took place on 12-13.3.2009. The main aim of this conference was to debate the issues raised in the Green Paper on Agricultural product quality policy and to consider the responses submitted. The Commission presented a summary report of the views expressed in the Green Paper.

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<sup>2</sup> [http://ec.europa.eu/agriculture/quality/certification/index2\\_en.htm](http://ec.europa.eu/agriculture/quality/certification/index2_en.htm).

<sup>3</sup> [http://ec.europa.eu/agriculture/events/qualityconference/conclusions\\_en.pdf](http://ec.europa.eu/agriculture/events/qualityconference/conclusions_en.pdf).

<sup>4</sup> Issued in the context of the recast of adoption of Council Regulation (EC) No 510/2006 on geographical indications – 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>5</sup> [http://ec.europa.eu/agriculture/quality/policy/opinions\\_en.htm](http://ec.europa.eu/agriculture/quality/policy/opinions_en.htm)

- Council of Ministers adopted conclusions on the Communication in the June 2009 Council<sup>6</sup> with additional statements from Germany and Spain<sup>7</sup>.
- European Parliament adopted a resolution on "Agricultural product quality policy: what strategy to follow?" on 25 March 2010<sup>8</sup>.
- Other institutions also adopted opinions: European Economic and Social Committee in January 2010<sup>9</sup> and Committee of the Regions in February 2010<sup>10</sup>.
- Four meetings of the **Advisory Group on Quality of Agriculture Production** took place during the Impact Assessment. The Advisory Group includes socio-economic interest groups representing organizations throughout the EU involved in the agri-food chain. All groups, from farmers to NGOs and from traders to retailers, as well as consumers, participated to this group. Meetings took place on 06.07.2009, 09.10.2009 (enlarged), 10.03.2010 and 11.5.2010. The last meeting was mostly focused on the policy options and their impacts.

### 1.3. Impact Assessment Board opinion

The Impact assessment Board issued 2 opinions on this impact assessment. The board made recommendations for improvements; mainly to:

- Demonstrate the need for an EU action, specially has to cross border trade and evidence for distortion in conceptions resulting from false claims.
- Clarify the problems to be addressed and underpin analysis with supporting evidence. Economic and factual evidence, mainly issue to case studies has been added to reinforce the cost benefit analysis of the options.
- Discuss the options at a more detailed level, and express the objectives in more operational terms.

These recommendations as well as technical recommendations from the Board were addressed subsequently in the revised version and the final version of the report. The report was also completed with an explanation of the existing procedures, the main types of implementation and enforcement and certification costs and main burdens.

In the second opinion the board maintained its view that the added value of the EU measures for geographical indications schemes was weak.

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<sup>6</sup> <http://register.consilium.europa.eu/pdf/en/09/st10/st10722.en09.pdf>

<sup>7</sup> <http://register.consilium.europa.eu/pdf/en/09/st10/st10722-ad01.en09.pdf>

<sup>8</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0088&language=EN&ring=A7-2010-0029>

<sup>9</sup> [http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\nat\nat448\ces105-2010\\_ac.doc&language=EN](http://eescopinions.eesc.europa.eu/EESCopinionDocument.aspx?identifier=ces\nat\nat448\ces105-2010_ac.doc&language=EN)

<sup>10</sup> [http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdr\deve-iv\dossiers\deve-iv-048\cdr315-2009\\_fin\\_ac.doc&language=EN](http://coropinions.cor.europa.eu/CORopinionDocument.aspx?identifier=cdr\deve-iv\dossiers\deve-iv-048\cdr315-2009_fin_ac.doc&language=EN)



## 2. INTRODUCTION

The "Geographical Indication" (GI) is a type of intellectual property right that may apply to all kinds of goods. Like trade marks 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>11</sup>. The substance of the concept is that a geographical indication 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.

The European Union has developed a policy on protection of geographical indications based in two different types:

- Protected Geographical Indication (PGI), which are names used to designate a product originating in a territory (locality, region or in exceptional cases, a country) for which a certain quality, reputation or other characteristic can be attributable to its origin. At least one of the steps of production of the product needs to take place in the said territory, which means that raw material to make the product does not necessarily originate from the geographical area.

- Protected Designations of Origin (PDO) which are names used to designate a product which is also originating from a limited territory (region, locality or in exceptional cases, a country) for which its quality or characteristics are essentially or exclusively due to its origin. Natural and human factors of the territory are often responsible for that differentiated quality. For a PDO, all the steps of the production of the agricultural good or foodstuff have to take place in the region. This means that the raw material for a transformed PDO product (milk for a cheese product for example), should be originating in the geographical area.

Although PDOs and PGIs are usually geographical names (Parmiggiano-Reggiano, Queso Manchego, Champagne), they can also be "traditional names" like Feta or Reblochon.

PDOs or PGIs are not mere origin labelling names, but names for agricultural products or foodstuffs that present a specific given quality, defined by the producers themselves, which is the result of the factors of the area: climate, soils conditions, know-how, local breeds, endogenous varieties, etc.

The specific quality or characteristics of a PDO or a PGI permits the product to be differentiated in the market. The majority of PDO/PGI products benefit from a strong reputation in the market place. The aim of the European Union system<sup>12</sup> is to ensure the correct use of those names for genuine products, as well as to avoid uses of the names that could be unfair or mislead the consumers.

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<sup>11</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 Trade marks, Industrial Designs and Geographical Indications, Eight 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>12</sup> Other multilateral (Lisbon arrangement, TRIPS agreement) and bilateral agreements ensure also a protection to geographical indications.

## 2.1. Creation of the EU system for GIs

Alongside the completion of the internal market in the 1980s, numerous sales names, labels, designations of origin, etc. were present in the market place. Some Member States and operators warned policy makers of competition distortions due to the free use of some notorious geographical names. On one side, the production costs of an imitated product were lower, on the other there was a significant risk of misusing the consumer as to his understanding of the origin of the product.

In parallel, there was a reflection on how to address, from a Community perspective, the problems of rural society (see *Green Paper on future of Community agriculture*<sup>13</sup>). A White Paper noted that rural areas, and in particular in mountain or less-favoured areas, held strengths in terms of regional, 'natural' and "speciality" product associated with origin and environmental landscape. The problem of the viability of agriculture in rural areas was to be partly addressed by encouraging that production, through so-called "quality schemes", including geographical indications system.

These problems were addressed creating the PDO/PGI scheme in the 90s<sup>14</sup>, willing to harmonise definitions for designations of origin as well as agree on an level of protection that would be granted to those names. In parallel, there was a clear aim to help producers in rural areas to advertise and market product with specific characteristics and/or farming attributes that they could produce having a competitive advantage and for which there was a consumer demand.

Since then, the trend has been increasing the quality of products within the framework of the CAP, thereby promoting their reputation. Moreover, rural development policy (the "second pillar" of the Common Agricultural Policy (CAP)) introduced in 2005 specific measures to support national and European quality schemes, including PDO and PGI<sup>15</sup>, still in place. The European Union also supports, as part of the CAP, through co-financing of promotion campaigns for PDO and PGIs, in the EU and in third countries.

## 2.2. The registration process of a PDO or PGI at EU level.

The most importance step in order to be register as a PDO or PGI in the EU register is the preparation of an application by a producer group. The main document is the product specification, which describes the "*locale, loyale et constante*" practice of production, defines the delimited area in which it can be obtained, as well as some other rules applying to the PDO/PGI. Drafting the specifications can be a difficult exercise, specially when producers do not agree as to a common method of production or are not located within the delimited area.

There is no comprehensive data available on the costs of preparing a PDO/PGI application, since it is very difficult to aggregate data referring to diversity of products from industrial one like beers to raw materials like cereals. However, information included in certain studies could provide interesting indications. The cost of preparing an

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<sup>13</sup> COM(85) 333 final - Perspectives for the Common Agricultural Policy, V-Bulletin EC 7/8-1985.

<sup>14</sup> Regulation (ECC) 2081/1992, was adopted 14<sup>th</sup> July 1992 (JO L 208:1 24.07.1992)

<sup>15</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.

application 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 €. In Austria, a recent study based on 2 applications (2010) showed that the cost of preparation of a PDO/PGI application could vary from 20.000€ to 40.000 €. It corresponds to 6 to 12 month's salary, and includes compiling scientific evidence, research and negotiation with authorities.

Once agreed within the Member State the application should be submitted to the Commission services. The registration process of an application for PDO/PGI at EU level includes several steps:

- Reception of the application and examination of the application by the Commission services within 12 months.
- If the application does not meet the requirements, it shall be rejected, following a vote from Member states in the Regulatory Committee.
- If the application meets the conditions, it would be proposed for publication aiming to collect objection to the registration of the name (Official Journal series C). A six months period (2 months for wine) starts in which objections can be made;
- Amicable procedure between parties. In case of an objection, a six months period starts in which the arguing parties should settle their conflicts. The Commission invites the parties to find an agreement (through a formal letter) but does not intervene during the talks. If no agreement is settled between the parties, a final decision is being taken by the Commission, after a vote in the Regulatory committee. The whole process, delays the registration process for one year at least.
- If the application is not objected, the name is proposed for registration.

The minimum delays for the registration process (when no objection is submitted) are:

| Months                               | Scrutiny (maximum) <sup>16</sup> | Publication for objection <sup>17</sup> (2) | Objection | Publication for registration (2) | Total |
|--------------------------------------|----------------------------------|---|-----------|----------------------------------|-------|
| Agricultural products and foodstuffs | 12                               | 2   | 6         | 1.5-2                            | 22    |
| Spirits                              | 12                               | 2   | 6         | 2                                | 22    |
| Wines                                | No time limit fixed              | 2   | 2         | 2                                |       |

Nevertheless, it is commonly observed that the application received by the Commission cannot be immediately published for opposition and after a first examination the Commission services request additional information. This leads to exchange of letters with the Member State concerned and delay the registration process. In average, the time

<sup>16</sup> Maximum scrutiny delay and objection delay are defined by EU regulations.

<sup>17</sup> Publication delays for objection and registration include CIS + Translations + Check by the unit + Adoption + Submission to OPOCE for publication.

span for registration of a name after the application has been sent to the Commission is almost 4 years (in 2009, 8% of the names registered had had their application sent to the Commission less than 2 years before, 24% between 2 and 3 years, 22% between 3 and 4 years and 24% between 4 and 5 years and 22% more than 4 years). This can be explained by the time needed for Member State to consult the producers' organisations each time they receive comments from the Commission, for producers to gather information, proceed to additional studies when needed, and prepare the reply, and for the Commission to analyse the elements provided in the reply.

### **2.3. Protection granted to PDO and PGIs and Community symbols**

For all PDOs and PGIs the EU legislation has defined the same level of protection across the EU. It reserves the use of the name exclusively to the operators that comply with all the requirements of the specifications (including the geographical delimitation), by protecting against:

- (a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration insofar as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;
- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the consumer as to the true origin of the product.

Enforcement of protection of the names is responsibility of Member States and is organised in different ways depending of the administrative and territorial organisation of a Member state. Enforcement of the scheme in the market place is part of the general enforcement activities under the General Food Law as any infringement of Article 13 of Regulation 510/2006 would mean that the consumer is subject to fraudulent, deceptive or misleading practices<sup>18</sup>. Members States can, following the principle of subsidiarity, delegate the enforcement and surveillance tasks to regional or private bodies.

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<sup>18</sup> Indeed, according to Regulation (EC) No. 882/2004<sup>18</sup>, “the Member States should enforce feed and food law, animal health and animal welfare rules and monitor and verify that the relevant requirements thereof are fulfilled by business operators at all stages of production, processing and distribution. Official controls should be organised for that purpose.” (Whereas (6)). The controls foreseen by Regulation 882/2004 aim, among others, at “guaranteeing fair practices in feed and food trade and protecting consumer interests including feed and food labelling and other forms of consumer information” (Title 1, article 1(b)).

It is difficult to evaluate the cost of enforcement of the protection of PDO/PGI for producers and for administrations, when competence is shared between central and regional administrations, several national administrations, or Regional authorities and inter-professional bodies. It can also be integrated with General Food law controls or be responsibility of agencies/bodies such as Trading standards.

Community symbols for PDOs and for PGIs have been created in 1993, to be used in marketing of products made in conformity with the specifications of a registered PDO or PGI. Nevertheless, their use has never been compulsory. In 2006, the use of either the "protected designation of origin" and "protected geographical indication" mentions or the EU symbols was made compulsory from May 2009, for the labelling of products originating in the EU and marketed under a registered name.

Figure 1: European symbols for protected geographical indications (PDO) and protected designations of origin (PGI).



#### 2.4. Exclusivity of the European Union system

The European Court of Justice confirmed recently (Budějovický Budvar C-478/07, Rec. p.I-7721 cf. points 114, 129, disp. 2) that the creation of a Community system of protection of designations of origin and geographical indications by the Regulation (EC) No 510/2006 is exclusive, and prevents a Member State to run a separate national or regional scheme for the protection of geographical names falling within the scope of the Regulation<sup>19</sup> (agricultural products and foodstuffs).

National systems are in place to regulate the process of application (including national objection) and ensure the administrative enforcement of the protection to all PDO/PGIs. Some Member states do also grant national (transitional) protection to the names applied for registration, but this may be granted only under the terms of the EU Regulation, pending the examination of an application for registration at Community level.

Some Member states have also national mentions (i.e. *Appellation d'origine contrôlée*, *denominación de origen*), but also, the use of national indications is reserved to products or foodstuffs registered under the Regulation. If the name proposed for registration is

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<sup>19</sup> See Judgment of the Court of 6 March 2003 *Commission of the European Communities v French Republic* (Case C-6/02) (regional labels).

rejected by the Commission, the national protection shall cease, as well as the use of the national mentions.

## 2.5. The importance of PDO/PGI scheme in Europe

By June 2010, more than 900 names for agricultural products and foodstuffs have been registered under EU legislation (Regulation (EC) No 510/2006 for agricultural products and foodstuffs). The EU registers for wine and spirits are presently being created with, as a consequence of the recent reforms, a transitional protection applying for around 1800 names of wines and 335 names for spirit drinks. For aromatised wines, 4 geographical indications are recognised.

The value of production of PDO/PGI for agricultural products and foodstuffs is estimated to be EUR 14,5 billion in 2008 (wholesale price). The value of PDO/PGI production is stable, showing for last 3 years period a modest increase, which may be due to an increase in the number of registered names as well as rising value of production.

**Table 1: Annual increase of value for PDO and PGI**

|       | 2006/2005 | 2007/2006 | 2008/2007 |
|-------|-----------|-----------|-----------|
| PDO   | -0,4%     | +4%       | +2.23%    |
| PGI   | +2,3%     | +1,4%     | +2,3%     |
| Total | +0,9%     | +2,8%     | +2.26%    |

The value of production under PDO/PGI is slightly higher than the value of the organic sector (estimated to be EUR 18 billion in 2007, at retail level, or EUR 12 billion at wholesale level, including wines and spirits). Value of production of PDO/PGIs at retail level can be estimated to be EUR 21 billion (margin for retailers and transport costs have been estimated)<sup>20</sup>.

Distribution of registered names by country of origin is presented in table 2 below. Six Member States concentrate 96% of the value: Italy representing 33%, Germany 25% and France 17%, followed by United Kingdom, Spain and Greece. The number of names registered per country does not correlate with the economic turnover. In addition, data from the new Member States does not give the whole picture of the situation, as the number of registered names was still low in 2007.

In Italy, cheese represents 3/5 of the total value of production, and showing a growth over the years. Meat products (30% of total value) and olive oil do not show any particular growth neither in value or volume. In fruit and vegetable sector the volumes have doubled in 2 years. The value of production of German PDO and PGIs is mainly due to the importance of beers sector followed by pastry and meat products. Dairy is the most important PDO/PGI sector in France, with 50% of the total turnover, although the volume and value of production is decreasing. Fresh meat and processed meat products (including *foie gras*) are progressing, while the other categories are stable.

In United Kingdom the value can be attributed to three names: Scotch Beef, Welsh Lamb and Scottish Farmed Salmon.

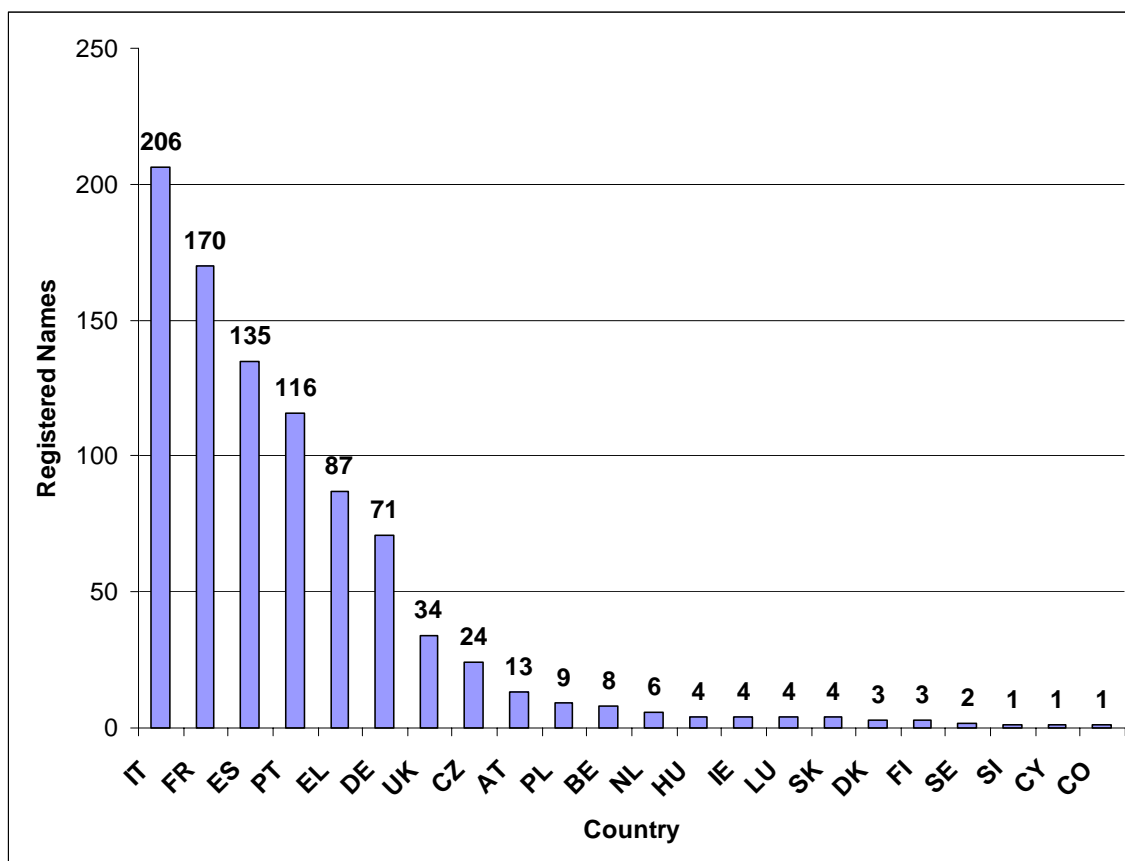
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<sup>20</sup> Turnover under PDO/PGI is thus equivalent to the value of production of EU Fresh fruit sector or the turnover of Danone (12th in worldwide food industry ranking).

In Spain, the main sector is fruit and vegetables, with fluctuating volumes. The Spanish meat sector progresses slowly, and stays the most important PDO/PGI beef sector in the EU. Cheese sector is decreasing, while meat products are progressing steadily but constantly.

In Greece the most important sector is dairy, followed by olive oil, covering only 2% of the total value of Greek olive oil production.

**Table 2: Total registered PDO/PGI (906) per country – June 2010**



The uptake of the PDO/PGI scheme is in general low in Northern Member States. The majority of the protected or registered geographical indications (wines, spirits and agricultural products and foodstuffs) originate in South and Central Member States. Member States have indicated as potential barriers to the development of the systems 21:

- Producers have a limited knowledge about the system as well as low interest in collective initiatives. They are more familiar to trade mark system and other national systems. PDO/PGI scheme is perceived as bureaucratic, costly (creation of an applicant group, drafting the specifications, evidence of the use of the name, burdens and cost of certification and controls) and time-consuming.
- Limited knowledge by consumers (difficulty in differentiating PDO from PGI, and understanding the concept of GI as such).

21 Discussion with MS delegates during the 84th Meeting of the PDO/PGI Committee held on the 25.5.2010.

Small producers in particular perceive the system as burdensome and expensive. This is due to the constraints of following a specification, maintaining a required consistent standard of production year-on-year irrespective of weather and varying production factors; cost and time to prepare an application; and certification or controls operations which are considered time consuming (require additional record-keeping) and costly.

- **Value-added of PDO/PGI scheme against standard product**

Added value of PDO and PGI schemes can be illustrated with the example of cheese products. Based on the market price of standard cheese in the EU market, we can estimate that PDO cheeses have 3.31 €/kg premium price (116% increase compared to value of "standard" production) and PGI cheeses have 2.85 €/kg premium price (85% increase compared to value of "standard" production) (see Annex IX for additional information).

- **Value by sector**

Although there is a high heterogeneity in the value of PDO/PGI production, some sectors clearly dominates. Cheese is the most important sector with 33% (EUR 5.5 billion) of the total value of production. The volume of production is equivalent to 8% of the total cheese production in the EU that is 3-4% of the cheese production of the world.

Beers, dominated by Germany, are the second most important sector, with 20% (EUR 3 billion) of the total value of production, representing 5% of the EU consumption of beer.

Meat products count 17% (EUR 2.47 billion) of the total production. Fresh meat represents 6% (EUR 1.1 billion), fruit and vegetables 4% and bread and pastry – 4% of the total value of production. The value of non-food products is only EUR 11 million.

The number of registered names does not correlate with the value of the sector: some sectors, with small number of registered names (e.g. beers, only 17 registered names) have a high value of production per registered name, while the opposite holds true for fruit and vegetables with 155 registered names.

- **Cross border trade**

2007 data shows that an important number of PDO/PGI do market part of the production outside the Member State of origin (43% in other EU Member States and 30% having exports to third countries). Only 43% sell the whole production in the country of origin.

When considering the total value of the PDO/PGI production, 82% is marketed in the country of origin, 13,4% in the EU (different Member States than originating) and 5% is due to exports to third countries.

The cheese sector is the sector with the highest value of exports, with 51 names exporting part of their production to third countries. This is followed by beers and olive oil.

- **Comparison with data from "standard" sectors**



One of the aims of the study was to have an idea of the importance of the production under PDO/PGI, in comparison with the value and volume of the production of the sector. A comparison has been possible only in the following sectors:

|                        | <b>PDO/PGI production in relation to the production of the sector</b> | <b>Notes</b>              |
|------------------------|---|---------------------------|
| Cheese                 | 9.2% of volume EU-27  |                           |
| Meat products          | < 3% of volume EU-27  | Estimation AND            |
| Fresh meat and poultry | 0.05% of volume EU-27   | High variability          |
| Fruit and vegetables   | 0.44% of volume EU-27   |                           |
| Beer                   | 7.35% production EU-25  | Based on 34 Mt production |
| Olive oil              | 1.8% production EU-27   |                           |
| Butter                 | 1.5% production EU-27   |                           |

## **2.6. Environmental approach to PDO/PGI schemes**

EU legislation on geographical indications (Regulation (EC) No 510/2006) does not mention environment protection among the specific objectives of the legislation. The Green Paper on agricultural product quality underlined that 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 or environmental sustainability of farming methods<sup>22</sup>. In this context, the need to include specific sustainability and other criteria as part of the specification was opposed by a large majority of respondents from different sectors (with the exception of some national authorities and individual consumers/farmers). Among the national authorities favourable to use of sustainability criteria, more than half believed they should be voluntary.

Even if environmental protection is not a primary motivation in GI protection schemes, some studies have shown that certain practices under PDO-PGI specifications have some link to environmentally relevant farming practices by requiring certain animal feeding systems or maximum stocking densities<sup>23</sup>. According to the findings of IPDEV study, GI products showed positive results in reference to conservation of biodiversity and distinctive cultural landscapes, and the regions of origin often include protected areas (see table in annex VI).

On the other hand, there are also examples of GIs where production methods are not at all different in the sense of sustainability from standard agricultural practices, with associated environmental impacts. In some cases, farming systems and nature values may vary considerably within a PDO production area. IPDEV findings show also that whenever elements connected to the preservation of local environmental quality or

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<sup>22</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)

<sup>23</sup> EFNCP response to Green Paper on agricultural product quality.

biodiversity are a component of the product definition, then GIs may play a more important role in capturing extra revenues derived from these environmental attributes.

There is no full picture on the effects of geographical indications on protection of environment. Some studies show positives effects, but they cover a limited number of sectors, and evidence from certain more industrial products like beer, baker's wares, fish, or spirit drinks is missing. Positive environmental effects 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 sustainable production criteria could foster the introduction of environmental conditionalities.

However, 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 will be addressed through the drafting of guidelines on sustainability.

## **2.7. The legal framework**

Community legislation provides for *sui generis* geographical indications protection 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>24</sup>, the system was amended to adopt the principles of the regulation on agricultural products and foodstuffs (see below).
- **Spirits drinks:** an EU system was also created in 2008<sup>25</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.
- **Aromatised wines:** rules adopted in the 90s in the framework of a general regulation on definition, designation, presentation and labelling of aromatised wines<sup>26</sup>. Member

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<sup>24</sup> Regulation (EC) No 479/2008 of the Council on the common organisation of wine (OJ L 148 6.6.2008, p. 1), included in the Single Common Market Organisation Regulation (Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products).

<sup>25</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>26</sup> Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails (OJ L 149, 14.6.1991, p. 1–9).

States notify to the Commission national geographical indications for protection in the EU.

- **Agricultural products and foodstuffs:** a harmonised regulatory framework for GI registration in the EU was created in 1992<sup>27</sup>. Notwithstanding some challenges (cases in the ECJ and a 2003-2005 WTO Panel<sup>28</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, and in 2006 when the legislation was 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 non agricultural processed products.

## 2.8. Policy context:

In a declaration<sup>29</sup> issued on 20.3.2006 in the context of the adoption of Council Regulation (EC) No 510/2006 on geographical indications<sup>30</sup>, the Commission identified the following items to be addressed in a policy review:

- Use of alternative instruments such as trade marks (e.g. collective or certification trade marks) 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 with discussions with Member States and stakeholders. The review was then included in a wider initiative, the Communication on agricultural product quality policy<sup>31</sup>.

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<sup>27</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>28</sup> EC – trade marks and geographical indications (DS174, 290).

<sup>29</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>30</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 trade mark 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 trade marks. 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>. 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>

In the Communication on agricultural product quality policy<sup>32</sup>, adopted in May 2009, the Commission adopted strategic orientations for a recast of geographical indications legislation in the following lines:

- Simplification, especially by bringing together the three systems for wines, spirits, and agricultural products and foodstuffs into a single regulatory structure (while preserving the specificities of each system); by merging the existing PDO and PGI instruments and by providing for different levels of EU protection. Any new system should preserve the link with the area of production, the collective nature of the geographical indication, and guarantee EU recognition. It should keep aiming at improving consumer recognition of geographical indications and ensuring efficient enforcement and promotion of a credible system of geographical indications.
- Clarification of intellectual property rights, and particularly the relation between different types of intellectual property;
- Clarifications on generic names;
- Information where necessary on the place of farming of raw materials where this is different from the place indicated by the geographical indication;
- Possible extension of certification requirements to different operators in the supply chain (such as importers and distributors) as is the case for organic products.

The Communication also concluded that identification of PDO and PGI when labelled as ingredients in processed products would be addressed through soft law guidelines.

### **3. PROBLEM DEFINITION**

#### **3.1. Problem identification**

##### 3.1.1. OBJECTIVES OF PRESENT LEGISLATION

The geographical indications schemes have the following objectives (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, (EC) No 110/2008 for spirits, Regulation (EEC) No 1601/1991 on aromatised wines):

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<sup>31</sup> Economic urgency expressed by operators and Member States, motivated the Commission to deal with two of the subjects in 2008:

1) The inclusion of salt and cotton in the scope of the regulation on geographical indications. 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).

2) The modification of the Community symbol for a protected designation of origin by changing the colour from blue and yellow to red and yellow; this modification permits a further differentiation in the labelling between PDO and PGI. 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).

<sup>32</sup> Communication from the Commission COM(2009)243.

- Contributing to the diversification of agricultural production by:
  - Promoting products with certain characteristics.
  - Supporting rural economies.
  - Improving incomes of farmers.
  - Retaining rural populations.
- Enhancing the credibility of products having certain characteristics sought by consumers and provide clear information regarding the origin of products, so as to assist consumer choice.
- Create a system of protection on an EU-wide basis, ensuring fair competition between producers of products bearing geographical indications and setting clear, harmonised rules for different agricultural product, foodstuff and alcoholic beverage sectors.

The evaluation on the level of achievement of objectives of the PDO/PGI legislation was faced to methodological complexity that did not permit a full picture of the overall results on diversification and rural economy. Nevertheless it appeared that the protection granted by the scheme has served to protect product names, and thus generally preserve diverse products in different parts of Europe<sup>33</sup>. On the other hand, the scheme has had little overall impact on diversification for producers. In some cases PDO/PGI producers have reduced their previously diverse product varieties into one PDO/PGI product.

The impact of the scheme on development of rural areas can also be assessed by the extent to which it has helped to increase or retain economic activities in rural areas. The case studies on 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 and experts<sup>34</sup>. On retention of rural populations, it was not possible to reach any conclusions due to the little evidence available. Finally, regarding employment in the region, the effect of the PDO/PGI scheme has been low.

It can be then concluded that when the PDO/PGI scheme has had an effect, it is mostly an indirect one based on spill-overs from the increased production in the area. Thus, 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.

Concerning farm income, while there are data and case studies on the economic impacts of EU geographical indications, there is a lack of empirical, systematic and methodologically comparable research. While bearing in mind that results of case studies should always be taken with caution, studies show that GI protection helps producers

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<sup>33</sup> The case studies have shown a few examples where 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.

<sup>34</sup> In general, the evaluation of the impact of the PDO/PGI scheme on business conditions is judged to be positive, with many respondents noting a strong improvement. At the same time, however, other respondents reported that did not experience any significant impact on their activities. But, no PDO/PGI producer reported a negative impact.

improve their economic performance, and that it contributes positively to regional economic development<sup>35</sup>.

In general, evidence from a number of studies shows that farmer gets higher prices for a PDO/PGI product<sup>36</sup>. Nevertheless PDO/PGI products usually incur higher production costs than standard products, and do not necessarily get higher profit. However, in some cases farmers are able to get higher profits due to the PDO/PGI scheme, if some factors converge:

- farmers get a higher share of the profit in cases where they are represented by an association or cooperative benefiting from increased organisation and negotiation powers. Higher levels of integration and coordination of supply chain have been found to favour the increase in the capture of rent.
- the scheme increases access of producers to new marketing and distribution channels, including use of direct sales and other short sales circuits.
- concerning processed PDO/PGI products, when farmers sell a raw material which can indistinguishably be used in the production of a PDO/PGI or non PDO/PGI product they are not as successful in retaining a high share of the value added of the PDOs/PGIs.

These observations correlate with the perception of the producer groups of PDO/PGI (collected through a DG-AGRI survey made directly to PDO/PGI producer groups in 2007)<sup>37</sup>.

The analysis concerning the level of achievement of the other objectives is detailed below (visibility of the scheme and complexity of legal framework).

### 3.1.2. PROBLEMS RAISED

#### **Visibility of the EU scheme:**

If a consumer is faced with a lack of reliable information about a product – information asymmetry – he may not be able to trust quality claims and thus be unable to optimise his choices. The EC created the PDO/PGI scheme in order to provide consumers with guaranteed information on an important qualitative aspect. However, the knowledge of the consumers, suppliers and producers about the scheme, the registration system, as well as visibility and valorisation of the system in the market (through the Community symbols) appears to be low: a survey indicated in 2007 that only 8% of European

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<sup>35</sup> Trade, Intellectual property and sustainable development (IPDEV), financed within the Sixth EU Research Framework Programme has assessed the applicability of geographical indications as a means to improve environmental quality in affected ecosystems and the competitiveness of agricultural products. <http://www.ecologic.de/modules.php?name=News&file=article&sid=1357>

<sup>36</sup> 4 supply chains of PDO have analysed (case studies conducted under the **JRC projects on quality certification schemes**). Results provide interesting evidence of price formation and added value distribution in the chain. See also Barjolle, Révion and Sylvander, “Creation and distribution of value in PDO cheese supply chain”, *Economies et Sociétés*, n°29, 9/2007.

<sup>37</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. 88% of respondents were producer groups. Respondents were originating from 13 Member States. Answers concern to 5 categories of products: olive oils, meat products, cheese, fruits and vegetables and meat.

consumers are able to distinguish and recognise the Community symbols<sup>38</sup>. The low consumer awareness of the designations suggests that the promotional campaigns were not very successful. Moreover, some producers express concerns about the small interest that retailers show in the scheme. A research<sup>39</sup> among grocery retailers shows that they also had concerns in respect to the low general profile of the schemes or the low prominence of logo on packaging. The need to adapt the logo to languages in the EU was also raised by operators, who argued for a universal logo.

Moreover, there is confusion as to the meaning of the PDO and PGI symbols. Of those who recognised the PDO/PGI symbols, only 51% correctly identified that the symbols mean the product is produced in one specific area and only 42% correctly identified that the symbols mean that “guarantee of origin and compliance with product specifications are certified by a controlling body”. Moreover, only about one third were able to identify that the symbols identified products being produced according to an established specification or with a quality related to the area in which it is produced. In addition, about a quarter of survey respondents erroneously believed that the PDO or PGI symbol referred to a product being produced in an environmentally friendly way (a characteristic of Organic products), or using a traditional recipe and distinguishing features (a characteristic of Traditional Specialty Guaranteed (TSG) products).

Some changes have already intervened in the use of logos and mentions referring to the PDO/PGI scheme:

1) PDO symbol has been differentiated from PGI symbols in 2008 (red and yellow for PDO and blue and yellow PGI), see figure 1. It is not possible to evaluate the impact of such a change, adopted in 2008 and applicable since 1<sup>st</sup> May 2010. That change has been welcomed by the producers. As an example, in France, at the requested of the operators, the use of the PDO logo has recently been made compulsory for the PDO French dairy sector (cheese, butter and cream), that produced 224 thousand tonnes in 2008 for 1.5 billion €. French PDO cheeses represent 16% of volume and 21% of value of total cheese market in France.

2) The use of the terms “protected designation of origin” and “protected geographical indication” or the associated EU symbols in the labelling of products originating in the EU and marketed under a registered name was made compulsory in 2006, but only fully entering into force since May 2009.

The results of those recent changes can not be evaluated for the time being.

Certain stakeholders have also indicated fragmentation of labelling rules as a problem when marketing food products in several EU markets - diverging national rules give rise to additional need for regulatory assessment costs, printing additional labelling particulars. The legal situation is unclear regarding which linguistic version(s) of the EU logo may, or in some circumstances must, be affixed on the label of a PDO/PGI. This could lead to situations where the products bearing the logos are not placed on certain

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<sup>38</sup> Evaluation of the CAP policy on protected designations of origin (PDO) and protected geographical indications (PGI). Study carried out by London economics in association with ADAS and Ecologic.

<sup>39</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>

markets or are discouraged from certain markets because the official language used in that market does not appear on the logo.

The European symbol and mentions are not protected in third countries market, and can potentially be used by any operator, even if not complying with the principles of the EU system and the product specification. Moreover a company has recently submitted an application for protection of similar symbols to the EU logo, as well as to abbreviations of the EU mentions on Canada. Without any protection, the EU symbols and mentions can be usurped or even, be reserved for the use of particulars.

### **Complexity of legal framework and the registration process**

Present legislation appears complex:

- It is divided into four legislative frameworks depending of the product it is addressed to: wines, aromatised wines, spirits drinks and agricultural products and foodstuffs. Although same principles apply (definitions, scope of protection, control bodies, administrative enforcement) differences persist, for example as to procedures or details on level of protection. A comparison of legislation is summarised in Annex IV.
- Legislation is implemented in different ways in different Member States (see below), with regard to application procedures . There is significant diversity in time period for objections (from one month in BE or IT to five months in CZ) and other steps of the procedure at national level. The whole process of preparing the application, examining it, publishing for objection and solving the objections if any, can take in some cases several years.

Procedures at EU level are also long (between 2 and 4 years). Although the effects of the long procedure at EU level are partially limited by the possibility to grant national protection during the procedure(as well as the fact that priority vis-à-vis any trade mark application applies from the date of receipt of the application) producer groups complain regularly about the length of procedures both under national and EU procedures.

- Several types of problems have been identified related to confusion in intellectual property protection against other uses, notably names with long usage, plant variety and animal breed names, trade marks and generic names. In addition, stakeholders have cited<sup>40</sup>:
  - a) the grounds for objections against a registration and the scope of protection of a protected name do not correspond, with the result the potential objector cannot file an objection even though the decision may affect his rights;
  - b) use terminology differs to describe key concepts used in intellectual property rights in general, such as "similar uses".

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<sup>40</sup> See also Annex V.



These kinds of complexities tend to favour larger-scale producers and producer groups, who have the resources to investigate the legislation and liaise with regional or national authorities. For small producers who do not have spare time or resources, nor ready access to experts who can advise on applications, complexity and bureaucracy acts as a significant deterrent to making applications and to joining schemes. As a result, the more active producers in preparation of applications are likely to be those with greater resources. The specifications themselves may not reflect the constraints of small producers. Requirements for precise parameters to be observed in production processes or in the final product (fat content; brix sweetness; temperature, etc.) and extra requirements requiring investment in plant and machinery (particular forms of presentation, storage and packaging, etc.) can militate against the participation of small operators. Even if they can overcome the hurdle of presenting an application (or if one is filed by larger enterprises) the on-going costs and burdens of certification is cited as a dissuasive factor.

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

- (1) European agricultural production faces a risk of homogenisation to respond to growing competition in the market place. One visible effect is a threat to the diversity of local products. But in response, increasing priority is given to traceability systems (Wilkinson, 2005)<sup>41</sup>.
- (2) Food supply chain is facing increased competition from international actors (COM(2009)591)<sup>42</sup>. Competition is the main driving force in a functioning market place, as it forces operators in the supply chain to react to changes in behaviour of the rest of the chain (Dries, Mancini, et al 2006)<sup>43</sup>. Competition also encourages operators to seek a better position on the market.

Competitive pressures force operators to try to take action to maintain market share and to secure the added value of products. One of the most important developments in the food supply chain in the past decades has been the growing concentration and increasing bargaining power of major processors and retailers. Retailers in particular have reacted to competitive pressures to reduce costs and increase efficiency, and this has given rise to concerns:

- The imposition of standardisation of supply through contracts raises concerns about loss of product 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).
- (3) The demands rising from the market, with the trends pushed forward by competition and globalisation, are resulting in a multiplication of symbols

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<sup>41</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)

<sup>42</sup> Communication from the Commission on "A better functioning food supply chain in Europe" COM(2009)591.

<sup>43</sup> [http://foodqualityschemes.jrc.ec.europa.eu/en/documents/Backgroundpaper\\_formatted\\_final.pdf](http://foodqualityschemes.jrc.ec.europa.eu/en/documents/Backgroundpaper_formatted_final.pdf)

communicating attributes and characteristics of products, including origin, and authenticity in their food, as shown in several studies undertaken by SENER-GI<sup>44</sup>. Retailers are also using own-label "source of origin" marketing. This favours 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.

In particular, consumers call for reliable and clear information on origin and on differentiated products, including products obtained following traditional methods. 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 related to health and nutritional value.

New and evolving demands have also been rising lately from society, predominantly related to the preservation of diverse local and traditional products and conservation of environmental resources (like water), landscapes and biodiversity. In general, it is assumed that besides the contribution to economic and social dynamic of rural areas agriculture has to play additional societal roles in preserving European landscapes.

### **3.3. Who is affected by the problem, in what ways and to what extent?**

#### Visibility of the scheme

Producers of agricultural products linked to geographical origin are concerned as they support additional costs linked to the respect to the rules of the specifications (rules on production, labelling, conditioning and establishment in the defined area), certification costs (see below), and producers' group fees. The evaluation to the PDO/PGI policy showed, that production cost for a majority of PDO/PGI (10 cases out of 18) are higher than for their comparators. Additional cost range from 3% (Turrón de Alicante/Jijona) to 150% (Volaille de Bresse).

Additional cost is sometimes compensated by higher prices, but not necessarily by higher margins. Actually, in 14 out of 18 case studies, the price of a PDO/PGI product is higher than the price of its standard comparator product. The positive price premium ranges from 5% in the cases of Sitia Lasithi Kritis, Jamón de Teruel (5% in the case of farmers, 25% in the case of processors), and Turrón de Alicante/Jijona to 300% in the case of Volaille de Bresse. However, in 4 cases, the margin of a PDO/PGI product is the same as the margin of its comparator product (in 2 cases, there is no information on margins). For 12 cases, the margin is higher than for comparator products and ranges from 2% (Turrón de Alicante Jijona) to 150% (Volaille de Bresse).

Higher costs are necessary to guarantee quality and origin of the product, and maintain the credibility of the system. The way to increase the margin depends in a great extent to the possibility to get higher returns from the market. However consumers are not expected to pay a higher price if they are not able to identify the product with specific

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<sup>44</sup> <http://www.origin-food.org/2005/base.php?cat=30>

characteristics. In that sense, a lack of visibility of the scheme would have a direct effect on producers.

The problem of visibility of the scheme affects in a lesser extent traders and retailers. For most traders and retailers interviewed during the evaluation, PDO/PGI products account for a very small share of their overall business and they are seen as quite unimportant. This is especially true for larger retailers. It can not be expected to be interested in a scheme with low visibility that would not guarantee any consumer interest. For small, specialist shops and traders who specialise in distributing certain types of product the PDO/PGIs are more important. The most important benefit is the enhancement of reputation from being associated with high quality products. Again this is most important for small or specialist companies.

Consumers are concerned as final users of the product bearing a PDO/PGI. Nevertheless, across the EU27 Member States, just 8% of shoppers are able to recognise the products under a PDO/PGI. Consumer associations in a number of Member States and most traders and retailers responded that the PDO/PGI scheme can provide useful information for consumers.

#### Complexity of legal framework and the registration process

Producers are affected by:

- The length of the procedure to register the name (both at national and EU level). The application process lasts minimum 22 months (see page 10). During the application process producers are not able to use, in communication or labelling of the product, the EU symbol or mentions. Producers would then not benefit from the added value of the schemes.
- Confusion in intellectual property rights would affect producers, who are beneficiaries and right holders of the intellectual property rights linked to the GI, in respect of other users of names in conflict with the protected name.

Other operators, for which the right to use a name has been limited or denied are affected by length of the process of registration and legal uncertainty during the process.

Member State administrations prepare and adopt the PDO/PGI applications. The European Commission is also concerned by the complexity of the legislation and the length of procedure, as it examines applications and registers the names.

Small producers are particularly affected as they have lower capacity to make the necessary investments in finance, effort and time to prepare new applications. In addition small producers, if participation in an already established PDO/PGI may have difficulties to influence producer groups dominated by larger operators and to meet specification requirements, particularly where they require use of costly processes or capital equipment. Finally small producers may have problems to cover control or certification burdens and costs.

The EU schemes for geographical indications permits the developing countries applicants (under the same rules that EU applicants<sup>45</sup>) to access to the EU registers and benefit from the protection the schemes in the European market. The cost and conditions for a developing country producer group and for a small producers are similar to the ones from EU producer groups: costs of preparing the application and cost of control. Three non-European geographical indications have been registered till now (excluding names protected in the EU via international agreements). This limited number is mainly due to the weak part of market sales of GI products from developing countries so far, but could also be explained by the reasons identified for Northern European countries. Nevertheless the high number of recent application (18 applications<sup>46</sup>) indicates a change in the trend.

The effect of present EU policy on registration and protection of geographical indications applies only to the sales of products in the EU market. We can conclude that economic and social effects of the problem for developing countries producers is likely to be limited.

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

#### **Economic aspects**

The long delays in the application procedure (both on national and EU level) will continue to weaken property rights associated to the names.

Producers who have invested, (i.e. for Austria, from 20,000 to 40,000 euros for an application) will wait 4 years in average before they can benefit from their participation to the scheme. For example, PDO cheese producers may expect an added-value 100% higher than normal producers, in average (see annex IX), which is on hold for the time the application is processed. The effects on small farmers could be more serious, related to the lack of bargaining power with other actors of the chain will presumably increase.

Commission services receive between 60 and 100 applications per year from Member states and Third countries. This will increase with the entry into force of the registration systems for wine and spirits. Some new Member States in particular have applications under development and producer groups of third countries have also shown an interest in the system (e.g. from China, India, Thailand, Vietnam), and it is expected applications from third countries would increase in the future.

Under "no change" scenario, the administrations will have to use current processes and staff (16 FTE for the agricultural product and foodstuffs regulation alone) to deal with an expected increase in the number of applications submitted by Member States and third

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<sup>45</sup> In particular, the applicant (producer group) shall provide specifications of the product, the name and address of the applicant (producer) group, a single document with the main elements of the specifications, as well as the proof that the name is protected in the country of origin. The application as to be submitted accompanied with a translation in one of the 22 official languages of the EU. The applicant can submit directly the application to Commission services, or submit the application thought the national administration. No fee is asked for submission or any subsequent step if the procedure (as for EU applicants). Once the name is registered any operator, including producer, respecting the specifications, and benefiting from controls, can use the name registered.

<sup>46</sup> Registered PDO/PGI from non EU countries are: Café de Colombia, Napa Valley et Valle dos Vinhedos. Applications (18) are originating from China (10), Thailand (3), Vietnam (1), Turkey (2) and India (2).

countries as well as in the number of registered names, for agricultural products and foodstuffs. This would have resulted in a considerable net additional administrative cost, rather than any net savings. However, stakeholders seek a quick decision process which could be achieved by this solution.

The existence of four legal frameworks and registers would continue to confuse users, producers, trade mark holders, consumers, and third country partners. In addition, the management of four different systems may multiply administrative burdens for the EU and national administrations, essentially as to enforcement is concerned. It will also maintain risk of inconsistency between the existing legislations.

### **Social aspects**

It can be expected a small positive (and varied impact across PDOs/PGIs) on the development of the economic tissue of rural areas. The scheme can be expected to continue to support the cultural heritage and value of the regions of production, as suggested by case studies (London Economics evaluation).

In France from 2003 to 2005, PDO cheeses sales increased by 1.1% in traditional circuits as well as in alternative circuits (direct sales and open air market), thus contributing to the employment in small and medium enterprises (CNAOL figures). This trend can be expected to continue without a change in the policy.

Concerning the recognition of the logo by consumers, without any change in the characteristics and the conditions of use of the logos, no evolution can be foreseen.

### **Environmental aspects;**

As there is no specific requirement to protect environment in PDO/PGI schemes, it is difficult to assess the environmental impact if no change in policy is addressed.

### **3.5. 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. Article 43 (ex Article 37 TEC) of the Treaty on the Functioning of the European Union is the legal basis for the protection of geographical indications provisions.

## **4. OBJECTIVES**

### **4.1. General objective**

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

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

Community strategic guidelines for rural development (programming period 2007 to 2013, Council Decision 2006/144/EC) states that “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”.

Changes introduced in 2009 by the Health Check of the CAP also reflect a clear concern for market-responsiveness. In order to respond effectively to increasing competition on domestic as well as global markets, EU agriculture has to play to its strengths: emphasizing quality of different kinds, including that linked to geographical origin.

Finally, 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 ensures that European citizens receive value for money. This objective is also of direct relevance to the EU quality scheme (GIs).

#### **4.2. Specific objectives**

- (a) Provide clearer information on specific product characteristics linked to geographical origin, enabling consumers making more informed purchase choices.
- (b) Provide simpler and single approach at EU level for a system of protection of names for products with specific qualities linked to geographical origin.
- (c) Ensure uniform respect - throughout the EU - of the intellectual property rights related to the names included in the EU register of PDO/PGI.

#### **4.3. Operational objectives**

- (1) To provide clearer information on specific product characteristics linked to geographical origin, enabling consumers making more informed purchase choices by raising the consumer recognition rate of product characteristics linked to geographical origin by 0,5 % per year (or to 12 % in 2015). Baseline: recognition rate 8% in 2007.

Indicator: Consumer recognition rate of the EU quality schemas and symbols.

Monitoring: Survey by the end of 2015 on the consumer perception of the EU quality schemas and the recognition of the EU logos.

- (2) To provide a simpler and single approach at EU level for a system of protection of names for products with specific qualities linked to geographical origin thus increasing the number of registered PDO/PGI by 50 per year (or to 1250 by end 2015) and reducing the average timeframe to complete a registration procedure to 24 months in 2015.

Indicators: Number of registered PDO/PGI names, average time to complete a registration procedure.

Monitoring: Monthly statistics of the PDO/PGI registry.

- (3) To ensure uniform respect - throughout the EU - of the intellectual property rights related to the names included in the EU register of PDO/PGI by

reviewing Member States on enforcement activities (2 Member States per year).

Indicator: Number of Member States reviewed.

Monitoring: Analysis of multiannual plans on control. Analysis on annual reports on control

## 5. POLICY OPTIONS

The impact assessment on the Communication on agricultural products quality policy considered a wide range of options. Some of them were discarded during the analysis mainly due to low consistency, effectiveness or efficiency:

- **Co-regulation** and **self-regulation** which would require the involvement of non-governmental organisations, social and economic partners. The highly fragmented representation of the GI stakeholders and the economic and legal dimension of the problem are structural limits that make those options low effective and efficient in comparison to other options considered.
- **No action at EU level** would have led to a greater risk of market failure as to the non harmonised level of protection and mechanisms to ensure it. In the absence of a mechanism of mutual recognition between Member States, operators willing to have their products' names registered/protected in the EU would be facing the registration procedures existing in other Member States. Products circulating in the EU would have face a high risk of misuse, usurpation, etc. outside Member States granting 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** would have not been feasible to apply in a short term, as an international negotiation to adhere to WIPO (and requiring amendment to the Lisbon Agreement itself which currently only permits states to adhere) would be needed as well as some amendments on definitions.

For the purpose of this impact assessment the options below shall be considered.

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

See description on baseline scenario section 3.4.

### 5.2. Option A: Status quo accompanied with streamlining of procedures and clarification of PDO/PGI rules.

Maintaining the present system, based on a Regulation defining PDO and PGIs, the registration procedure the level of protection and its administrative enforcement while introducing significant changes in procedures (simplifying and shortening delays) and clarifying some rules governing the PDO/PGI relationship with other intellectual property rights like trademarks (description of the changes proposed is presented in Annex II). It would also help to reduce inconsistencies between the existing systems of protection: wines, spirits and agricultural products as foodstuffs. Alignment with other schemas EU Quality Schemas as TSG (Traditional Specialties Guaranteed) on the

procedural aspects will not only simplify and clarify the relation between the different EU Quality Schemas but will also increase their visibility.

The necessity and added value of that option is the same as to the status quo. The reasons scheme was created in the 90's (see part 2.1), are still valid, although the increase in cross border trade (see part 2.5) for products linked to origin increases the necessity of PDO/PGI scheme.

The means of that option are proportionate as the system is voluntary for the producers. Applications are thus prepared by interested parties ensuring that only names for which there is a demand are registered. The Regulation also ensures an adequate level of subsidiarity: Examination of these applications is done at Member States' level, as well as controls to guarantee that products bearing registered names and available on the market comply with the product specification requirements. Nevertheless a uniform approach is needed at European Union, as to ensure that European Union registered names meet the common conditions. The current instrument has in addition been widely supported during the public consultation as well as the proposal to simplify and streamline the procedures.

This is the preferred option by the majority of Member States and stakeholders. A modification of EU legislation would be needed amending Regulation (EC) No 510/2006 complemented with guidelines and future implementing rules.

### **5.3. Option B: Create a single legislation for protection of geographical indications**

Creation of a single Quality regulation for agricultural products, foodstuffs and spirit drinks in the European Union by grouping of the four existing legislations (wine, aromatised wines, spirits and agricultural products and foodstuffs) that provide for registration and protection of the relevant geographical indications. While similar in effect, differences exist in terms of definitions, application, scrutiny procedures and deadlines, types of register, and terminology of legal protection. A fourth system, on aromatised wines, needs to be aligned to the previous systems. Except for aromatised wines, these differences do not cause fundamental problems, but they limit consistency and present a confused picture to the outside world. This option will include the streamlining of procedures and clarification of PDO/PGI rules proposed in previous option A and also the single register presented in option C. Further information on the option is presented in Annex III. Detailed comparison between the existing systems is presented in Annex IV.

The necessity and added value of that option is the same as to the status quo and option A. The respect of subsidiarity and proportionality is the same than option A. The inclusion of in this Quality regulation of other schemas EU Quality Schemas as TSG (Traditional Specialties Guaranteed) will not only simplify and clarify the relation between the different EU Quality Schemas but will also increase the visibility of these.

Although the majority of Member States supports harmonisation of the systems, some defend that specificity for wine justifies separate treatment. The wine and spirits sectors were reformed in 2008, and stakeholders<sup>47</sup> are concerned that new changes in legislation

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<sup>47</sup> CEEV and COPA-COGECA have expressed that opinion.



will result in uncertainty. The EP (Scotta report)<sup>48</sup> considers that the three systems of geographical indications should be maintained and developed separately as at present.

#### **5.4. Option C: Create a single register for the 4 existing legislations**

This option consists in the creation of a single register listing the protected geographical indications and protected designations of origin, fed by the 4 separate legislations (wine, aromatised wines, spirits and agricultural products and foodstuffs) and procedures. (Option B above also includes a single register.) Names protected under bilateral agreements would also be included in the register. The details on that option are presented in Annex V.

Differences and inconsistencies between the systems, such as relations with trade marks, will not be addressed with this option. In addition, it would be possible that the protected names in the register would enjoy different levels of protection. It also would be possible that different means of enforcement and audit apply. Common facilities allowing further transparency and access to information shall also be explored under that option.

The necessity and added value of that option is the same as to the status quo and option A. The respect of subsidiarity and proportionate is the same than option A.

A modification of the four relevant existing regulations to create a reference to a single register will be needed. Special provision to allow inclusion of names protected under bilateral agreements should be foreseen in each system.

#### **5.5. Option D: Merge the 2 definitions for geographical indications and designations of origin.**

Merging the 2 definitions currently provided for in EU GI legislation: “protected designation of origin” (PDO) and “protected geographical indication” (PGI) will in practice result in deleting the definition of protected designation of origin (PDO). The margin of maneuver to modify the definition of protected geographical indication (PGI) is narrow as the European Community is bound to respect the Agreement on Trade Related aspects of Intellectual Property Rights (TRIPS), not to mention the difficulties of delisting existing PGI names that did not meet the new criteria. This option can be combined with options A, B and C above.

The necessity and added value of that option is the same as to the status quo and option A. The respect of subsidiarity and proportionate is the same than option A.

#### **5.6. Option E: Two levels approach legislation: Allow national systems**

As it was presented in point 2.4, under the current system, national systems can not grant national protection for names that are not submitted (applied) to the EU system for registration. Economic or trade-based criteria would be defined as precondition for registration of names at EU level. Subsequently, a revision of present list of registered names at EU level may be needed, to comply with the above mentioned economic/trade criteria.

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<sup>48</sup> European parliament resolution of 25 March 2010 on Agricultural product quality policy: what strategy to follow (2009/2105(INI)), adopted 25 March 2010.

Under a sub-option 1 it could be considered a system in which the national names would benefit from a protection under an intellectual property rights regime, in parallel to EU systems (without any link with the application to the EU register). In that case the protection granted would only apply to the national market.

Under sub-option 2 it could be considered that the names identified at national level would not enjoy intellectual property protection, but only from an "identification" process at national level.

That option offers very high margins of subsidiarity, taking into account Member States would identify the names (sub-option B) or recognise the names to be protected, and protect them in its territory (sub-option A). Added value of EU action will be limited, as it would apply only to the names protected through the EU register (names with a significant value and trade potential).

This option is supported by a minority of Member States that consider that for specific local products a protection at EU level is not needed while a recognition of specific local products may be achieved at national level. The EP (Scotta report) considered that introducing different levels of protection for European PDO/PGI could create unfairness, especially if the main criteria used are economic; The EP believes that all the geographical indications should enjoy the same degree of recognition.

Both sub-options may be combined with options A, B, and C above.

#### **5.7. Option F: Notification system.**

Under a delegation to Member States of the examination and registration of individual applications, Member States will notify registered GI's to Commission for publication (as the previous wine system). EU protection will be ensured by Member States for all notified GI's. National system will be checked by the Commission. Third country applications would be sent to (any) Member States for processing and onward notification to the Commission.

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 Member State to recognise GIs originating in that Member State and Third countries and a notification system to the EU. A body to solve the conflicts among the Member States might be needed.

That option offers the high margins of subsidiarity, taking into account Member States would recognise the names to be protected. Added value of EU action will be limited, as it would apply to a big number of protected names.

This option presents low effectiveness as to a uniform approach of recognition of geographical indications and protection, as every Member State would recognise its own GIs. A framework directive would lead to differences in the implementation of enforcement of the protection between the Member States. Some Member States would be enforcing by administrative means, other would require private legal actions to enforce protection.

As to efficiency, this option would lead to a serious risk of high number of notifications and names to be protected in Member States. As no EU objection procedure would exist,

conflicts between GIs and trademarks in other Member States could increase, as well as disputes concerning the generic character of some names. With an increased number of geographical indications and designations of origin, credibility of the system might be put in question. There is a low consistency with other agricultural policies (rural development, promotion).

### **5.8. Option G: Protection through trade mark system.**

Geographical indications could be protected through the trade mark system providing for Community collective mark<sup>49</sup>. 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 trade mark system (Council Regulation (EC) No 40/94 on the Community trade mark<sup>50</sup>).

Nevertheless, a collective Community trade mark does not, for example, entitle the proprietor to prohibit a third party from using in the course of trade indications concerning geographical origin, 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.

Another option could be to develop an EU certification mark. Generally speaking the main difference between collective and certification marks is that the former may be used only by particular enterprises identified under the rules of the collective mark, such as members of an organisation, while the latter may be used by anybody who complies with the standards defined by the owner of the mark. Thus, the users of a collective mark form a "club" of identified users while, in respect of certification mark, an "open shop" principle applies.

In consequence, the definition of designation of origin would disappear from the EU legislation, as same definition of geographical indications would apply to every Member State (TRIPS definition of geographical indication).

That option offers the highest margins of subsidiarity, taking into account Member States need to ensure compliance with TRIPS agreement. No EU action would apply with that option.

This option has been supported by a minority of Member States. The EESC (European Economic and Social Committee) feels that the use of trade marks 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 organizations with sufficient financial resources) while failing to provide the level of protection currently accorded to geographical indications.

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<sup>49</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

<sup>50</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, Official Journal L 011, 14.1.1994, p. 1.

See in annex VI presentation of the similarities and differences of the geographical indications and trade mark system.

## 5.9. Fine-tuned shortlist for further analysis

Option A ("**Status quo improved**", by the introduction of clarifications on PDO/PGI legislation(s), including **streamlining** of procedures) will be retained for further analysis of impacts as it shows efficiency, effectiveness and coherence with EU policies.

Option B: **Create a single legislation for protection of geographical indications** by merging legal texts as well as existing system for wines, aromatised wines, spirits and agricultural product will also be retained for further impact analysis. It presents high effectiveness on administrative practice, high consistency between legal frameworks, and full consistency with EU agricultural policies and policy on bilateral agreements.

Option C, **creation of a unique register for protected geographical indications** that would be fed by each of the existing legislations will be further considered as it presents high effectiveness for enforcement authorities, and effectiveness as to the objective to simplify information to consumers. The option is consistent with policy on international engagements.

Option D, **merging of PDO and PGI definitions** (abolition of PDO definition) will be considered for further analysis as it is consistent with international objectives and with simplification. Nevertheless it presents low effectiveness as to the objective to simplify information to consumers.

Option E, two levels approach (thus **creation of national systems** and reducing the number of PDO/PGI at EU level), with the 2 sub-options will be retained for further analysis of the options. It presents effectiveness as to rural development objective.

Option F, **notification system**, through a framework directive would be discarded at this stage, as it presents a low consistency with one of the objectives of the policy, to have a uniform approach of recognition and protection of geographical indications, as every Member State would recognise their own PDO/PGIs. A framework directive would lead to differences in the implementation of enforcement the protection between the Member States. Some Member States would be enforcing by administrative means, other would require private legal actions to enforce protection.

As to efficiency, this option would lead to a serious risk of high number of notifications and names to be protected in Member States. These was the case with thte previous system on protection of the names for wine : almost 5000 names had been notified by Member States. In addition, as no EU objection procedure would exist, conflicts between GIs and trademarks in other Member States could increase, as well as disputes concerning the generic character of some names. With an increased number of geographical indications and designations of origin, credibility of the system might be put in question. The option would also present low consistency with other agricultural policies (rural development, promotion).

Option G, consist in the abolition of the current sui generis PDO/PGI system at EU level while facilitating protection of geographical indications through the existing instrument of a collective Community trade mark under the Council Regulation (EC) No 207/2009 on the Community trade mark, would not be retained for further analysis of impacts.

The main reason is the low effectiveness as to the protection of names:

- The level of protection would be lower than the present EU level of protection. 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.
- Different level of protection would apply to wines and spirits comparing to that granted to agricultural product and foodstuffs.
- Enforcement would apply only through private action: GI producers, and/or Member States would need to engage in private legal actions in every Member States to ensure protection.

Transition between the current *sui generis* system and a new system providing a weaker protection would be extremely complex. It could give rise to disputes with current GIs beneficiaries.

Low effectiveness as to provide clearer information specific product characteristics linked to geographical origin, as trade marks do not require any link between the characteristics of the product and its geographical origin.

The option present same effectiveness as to the *sui generis* GI approach in the EU: definition, protection and instrument would be similar to every Member States and high effectiveness as to administrative burden as the Office for the Harmonisation in the Internal Market will examine the applications received directly from applicants.

Finally the option presents inconsistency with other EU action on quality policy (under rural development and promotion), with the European Union position in Doha Development Round and with the European Union in bilateral negotiations.

## **6. IMPACT OF OPTIONS**

The analysis of options is mainly based on a qualitative assessment, which was also the approach used for the impacts assessment for the Communication on agricultural product quality policy (2009). For that impact assessment, no sufficient data were available in order to do a cost-benefit analysis of the options.

During the evaluation of the policy carried out for the period 1992-2006 by London Economics, the main research methodology used was the case study approach. Nevertheless the limited number of case studies (in 10 Member States) did not allow drawing firm conclusion on the overall population of PDOs and PGIs. It was signalled by the evaluators that a key limitation for the evaluation of the scheme was that no data on the administrative implementation of the PDO and PGI schemes and on the PDO/PGI products was available, as Member States do not monitor the administrative and statistical aspects of the scheme such as value or volume of production, sales and prices of PDO and PGI products, cost, etc..

Since then, DG Agriculture has created a data base on the production volume and value of PDO and PGI. However, the availability of other data (cost, added value, market share, etc.) has not been ameliorated since 2009.

The options below have therefore mainly been analysed in a qualitative way, based on information received from the stakeholders (results from the extensive consultations as well as from a survey of producer groups realised in 2006). Nevertheless, the information available from some case studies or Member states has enabled to realise quantitative cost benefit analysis for some impacts of the options.

### **6.1. Option A: Status quo accompanied with clarification of PDO/PGI rules and streamlining of procedures.**

#### **Economic impacts**

It is expected that shortening of procedures will reduce the minimum registration period from 22 to 12 months. In addition, clarifications of the Regulation may enable applications to be clearer and of a better quality, thus limiting the numbers of exchanges of letters between the Commission and the Member States. It can be expected that it would reduce the average time span for registration from 4 to 2.5 years.

Under a shortening of process of registration producers will be able to benefit more quickly from their adherence to the scheme: higher added-value (100% and 55% higher for PDO and PGI cheese producers respectively compared to standard cheese producers, see Annex IX), possibility to apply promotion and rural development funds.

The shortening of the registration procedure by streamlining of procedures could have a positive impact on the efficiency of investments (in the application process) and marketing strategies, resulting in a better costs/benefit ratio in the conduct of business/SMEs.

The issue of additional cost linked to PDO/PGI schemes will not be addressed with that option. Those costs are linked to compliance with requirements set in the specifications, origin and traceability requirements and control or certification cost. They ensure the credibility of the scheme both as to the specific quality of the final products and the guarantee of the origin.

Small producers who currently face difficulties to participate in the PDO-PGI systems would not see their position improved. The obstacles to participation in the scheme (costs of producing following rules of a specification, lack of influence over larger enterprises in the producer group, cost of controls or certification, etc.) would not be addressed by that option.

Better rules on the relation of GIs with other users of names (trade mark, 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.

The harmonisation of delays for the three systems could facilitate access to the system for operators who wish to file oppositions to applications for registration. On the other hand, reduction of objection delays from 6 to 3 months would limit the potential objections in case objectors are aware or prepared to file within 3 months.

#### **Property rights**

Shortening of delays would contribute to legal certainty for GI applicants as well as trade mark applicants (as to a trade mark registration after a GI application submission).

Depending on the concrete solutions implemented to regulate the relation between users of names as holders of different intellectual property rights (notably trade marks and GIs), the intangible assets will be affected differently.

Guarantee along the chain on the origin and qualities of the product (production, transit, trade prior to retail, market place) would improve the information-value of the scheme to retailers and consumers. Increase of information on control would lead to a higher efficiency on the whole control system.

### Functioning of the internal market and competition

Economic literature<sup>51</sup> highlights 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 will occur in the present case when rules on raw materials and ingredients are not sufficiently clear.

### 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.

### Specific regions or sectors

The pattern of distribution of registered GIs shows a strong bias towards Less Favoured Areas (LFAs)<sup>52</sup>. In most Member States a 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"<sup>53</sup>. By addressing a number of problematic issues, simplification and clarification may contribute to increase positive impacts on these areas.

### Third countries and international relations

The insertion of names protected via bilateral agreements into the registers and domestic protection systems 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 trade marks would decrease legal uncertainty.

### Developing countries

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<sup>51</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 August, Bologna, 28th – September 1st 2004. Available at: <http://www.tesaf.unipd.it/minnesota/It/mauro-poinelli.pdf>

<sup>52</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).

<sup>53</sup> Op cit.

As far as the option will make more clear the rules and shorter the application procedure, the option will have positive effect on non-EU applicants, including from developing countries.

### **Social impacts**

#### Consumers and households.

Reinforcement of control along the distribution segment of the marketing chain would increase guarantee in the system.

A simpler logo without a text attached to it may be easier to communicate at EU level. It may therefore enhance the visibility of the scheme and make it more attractive for consumers.

The protection of the logos worldwide would guarantee to consumers that wherever they buy a product with the logo, it is a product with a registered name complying with the specification.

#### Employment

A clarification of certain provisions in the legislation in force would make 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 agro-tourism or via benefits to the local gastronomy and other companies in the region that either process or sell the product.

## **6.2. Option B. Create a single legislation of protection of geographical indications**

Option B is equivalent to option A with an additional simplification aspect, the merge of four legislations into a single text. Impacts of option A can therefore be also expected for option B. In addition, the following impacts can be anticipated:

### **Economic impacts**

#### Operating costs and conduct of business/SMEs of the wine and spirit sectors producers

No specific impacts for wine producers are to be expected, as technical rules of that sector would not be changed. Spirit producers using already registered names would neither face any economic impact. Under that option it is even expected that for new applicants would benefit from a shortened procedures and clearer rules.

Nevertheless, it should be taken into account that wine and spirits sectors have been reformed in 2008, including provisions on GI. A new reform could provoke uncertainty as to the business environment, although the effects could be mitigated with long transitional periods.

The harmonized objection proceedings could facilitate access to the system to operators willing to oppose to the applications for protection.



## Public authorities

Fully harmonisation of delays, objection procedures and implementing rules would increase efficiency and coherence and could result in scale economies in competent authorities (Member States and Commission).

## Trade policy<sup>54</sup> and international context

A single legal text would facilitate applications from third countries, as the same rules would apply to different sectors and would make easier preparation of applications. It would also have a positive impact vis-à-vis third countries as the EU Register would include all third countries GIs, protected either through EU domestic legislation or through bilateral agreements.

The merging of the four systems could support EU negotiating positions on the need for an extension of TRIPS protection granted to wines and spirits to agricultural products as well.

A single regulation would facilitate negotiation of bilateral and multilateral negotiations, as the change would make more clear EU legislation and assist comprehension of the EU GI system currently constructed through specific regulations for different sectors.

## Developing countries

Applications from developing countries could be facilitated as the same rules would apply to different sectors and would make easier preparation of applications. It would also have a positive impact vis-à-vis developing countries as the forthcoming names protected under EPA or other bilateral negotiations would be included in the Register.

No institutional request to third countries (legislation, administrative and judicial capacities required to implement new obligations for protecting European GIs) would be introduced as to international obligations arising from agreements with developing countries (like EPA with CARIFORUM).

## **Social impacts**

### Consumers.

Visibility of the PDO/PGI scheme would be increased as the four systems would share the same principles and could be marketed using the same European logo. This would reduce the diversity of logos in the market presented to consumer but also help to communicate the concept of geographical indications.

Clearer information for the consumer as one single system would exist. It would then be easier to conduct promotion campaigns on the system and the logo. For example a campaign co financed for one sector (dairy sector in France) would benefit the wine and the spirit sector.

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<sup>54</sup> In order to comply with WTO obligations, any new piece of legislation should be notified to TRIPS Council pursuant to Article 63.2 of the TRIPS Agreement.

2008 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>55</sup>. The system is fundamentally based upon the common notions of designation of origin and GIs 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.

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

### **6.3. Option C. Create a single register for the four existing systems**

Option C includes option A but with additional simplification aspects, a common register/list for all the protected names. Impacts of option A can therefore be also expected for option C. In addition, the following impacts can be anticipated:

#### **Economic impacts**

##### Functioning of the internal market and competition

Setting up a single register could bring efficiencies to the enforcement process, thereby contributing to fighting misuses of protected names. Nevertheless, retaining different control structures as it appears presently as well as varying levels of protection will be confusing.

##### Administrative burdens on businesses

While some administrative burdens related to sectoral specificities would remain, nevertheless, a single register would contribute moderately to reducing administrative complexity.

As for Option B, small producers who currently face difficulties to participate in the PDO-PGI systems would not see their position improved. The obstacles to participation (costs, compliance burdens, adherence to a specification year on year, lack of influence over larger enterprises in the producer group, etc.) would be unaffected by Option C.

##### Property rights

The option would not affect existing rights of GIs holders, which according to the systems would refer to the rules currently in force. Nevertheless it would facilitate information on the names protected, although names included in the register would have different levels of protection depending on the system.

##### Public authorities

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<sup>55</sup> Gonzalez Vaque and Romero Melchor, "Wine labelling: Future perspectives", *European Food and Feed Law*, 2008.

Enforcement through administrative protection would be easier as only one list would group the protected GIs in the EU. Nevertheless, having different control instruments and different levels of protection will be confusing for inspectors.

### **Social impacts**

It is difficult to foresee other impacts than those already expected for option A.

### **Environmental impacts**

It is difficult to foresee other impacts than those already expected for option A.

## **6.4. Option D: Merge the 2 definitions for geographical indications and designations of origin**

Option D is equivalent to option A with additional simplification aspects. Impacts of option A can therefore be also expected for option D. In addition, the following impacts can be anticipated:

### **Economic impacts**

#### **Costs for agricultural producers and right holders**

This option may result in loss of investment for producers and right holders that have invested in marketing and communication to promote the recent graphic differentiation between PDO and PGI symbols. In some countries, the whole system will lose visibility and credibility as a quality guarantee, as the best known instrument (PDO) will be deleted.

As an example, the French organisation CNIEL conducted a promotion campaign on the PDO logo (2007-2010) for 3,595 million € (1,797 financed by the EU).

In addition, PDO products have a higher added-value compared to standard production than PGI products. For example, average standard market price for PDO cheeses is 117% higher than standard market price for cheddar, while average standard market price for PGI cheeses is only 68% higher. Merging PDO and PGI would probably lead to a loss of this additional premium for PDO producers.

### **Social impacts**

#### **Consumers**

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

Although no specific studies have been made on the awareness of the two definitions, in some Member States 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.

The deletion of the designation of origin definition would cause confusion in the consumer as he/she will see on the market the EU 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.

#### Third countries including developing countries and International relations

The abolition of PDO definition, and thus the permanence of only the PGI definition would simplify the EU legal text by getting it closer to the international (TRIPS) definitions.

#### **Environmental impacts**

Elimination of PDO definition would 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>56</sup>.

### **6.5. Option E: Two level approach: Allowing national systems**

#### **Economic impacts**

##### 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 can be quite different and so production volumes. In any case, the Member States are best placed to check that certain conditions have been met. It could be argued that the set up of national systems would represent a step forward in this direction.

However, there is a need to ensure that a uniform approach is followed across the Member States, the lack of a supranational level of scrutiny could raise a significant issue in terms of uniformity in the rules for 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.

National registers would presumably cover applications for protection which have been rejected at EU level. In the period 2006 to 2009, 102 applications were rejected by the Commission or withdrawn by the Member States.

In sum, a national system that incorporates protection of names at national level could be problematic in the single market.

##### Operating costs and conduct of business, specially for Small and Medium producers and Enterprises

SMEs, that represent the greater part of European food firms producing PDOs and PGIs<sup>57</sup>, meet difficulties in adapting their strategies to market changes, and in competing

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<sup>56</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 Numero 8 (7-22), 2004.

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>58</sup> are unlikely to benefit from sales beyond their own region, they are potentially useful in the development of agro-tourism, where the cultural identity bestowed by the concept of *terroir* and the GI system can be valuable.

National systems will also be more adapted to overcome potential barriers that small producers face when accessing to PDO/PGI schemes (length of procedure at EU level, complex system and cost of certification or controls).

Creation of national systems could also benefit producers of Northern Member States where the uptake of the scheme is low. It would permit to further adapt the system to the local tradition or specific agricultural structural problems.

Nevertheless, if the national system is a simple reflection of the EU system (national system with protection of the names), the same burdens and impediments to participation by small operators will apply. However, if the national systems served only to identify product linked to its place by the local nature of its production (without protection of the name), a useful instrument, complementary to the EU GI scheme(s) could be created. Several Member States currently operate schemes that identify and list local product and/or traditional product, but without providing for name protection. (See the IA on Traditional specialties for more discussion on this question).

A national system (without protection of names) would not need to engage producers in certification or control cost, neither in costs linked to the respect of specifications.

#### 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.

National systems of protection could also prove to be better placed to assess the specificities of applications for small and local PDO/PGI production<sup>59</sup> and make easier the registration process for GI covering small and local productions.

In addition, eligibility to rural development programs depends in some Member States on the registration of a name as PDO/PGI. In that context, the existence of national systems

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<sup>57</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>58</sup> Josling, “The war on terroir”, *Journal of Agricultural Economics*, Volume 57 Issue 3, 2006, Pages 337 – 363.

<sup>59</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’.

would make more easy access by national producers, in particular the small and local producers, to those measures.

#### Control or certification costs

If the protection of the names is granted at national level under a GI system (sub-option 1), control or certification costs should not change, as the control against the respect of provisions of specifications will still be needed. However, if a national system excludes national protection of the name sub-option 2), controls would be lighter, and certification not needed of producers.

#### Property rights

Under sub-option 1, intellectual property rights of products bearing a registered name at national level would be diminished as they would be enforceable in the same country only. Under sub—option 2 no intellectual property rights would be granted at all to the names recognized.

In addition, under sub- option 1, the possible introduction of a new form of intellectual property right at national level could complicate the legal framework as well as lead to different application and enforcement of intellectual property rights in the single market.

#### Specific regions or sectors

It can be assumed that due to diverse historical and legal traditions some Member States would not put in place national protection systems for geographical indications. Producers in these countries would therefore face a disadvantage.

#### Third countries and international relations

The establishment of national systems with intellectual protection of the names (sub-option 1) should comply with WTO obligations. Therefore, this would raise the issue of third countries producers' right to protect geographical names in each Member states territory via national systems. Applicants from third countries could need to apply to more than one national system and thus burdens would proportionality increase.

#### Public authorities

The creation of national systems (sub-options 1 and 2) would decrease workload on treatment of applications to the Commission. In addition, as it presumably would reduce the number of GIs protected at EU level, it would also have a positive impact on national enforcement authorities. Nevertheless, in some Member States public authorities would face an increasing number of names protected at national level.

### **Social impacts**

#### Employment

The set up of national systems tailored for local productions could be an incentive for small food businesses to seek names' protection (sub-option 1) or a national recognition (sub-option 2) to better compete in the market. This would end up in supporting local employment.

#### 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.

For sub-option 1, a negative impact on consumer information since national geographical schemes would coexist with EU schemes and would increase the "logo fatigue" phenomenon.

## 7. COMPARING THE OPTIONS

Likely advantages and drawbacks of options retained for impact analysis are listed below.

|   | <b>Advantages</b>  | <b>Drawbacks</b>   |
|---|--|--|
| <b><u>Option O : Status quo</u></b>   | Stability of the legislative framework;  | Long procedures engages costs for producers.<br>Ambiguities remain as to some rules on intellectual property rights.<br>Weak protection and use of logo and mentions.  |
| <b><u>Option A : Status quo accompanied with streamlining of EU procedures and clarification of rules</u></b> | Shortening and harmonisation of procedures will :<br>- Reduce cost for operators<br>- Increase efficiency and coherence between the four systems.<br>Clarification of rules will resolve current ambiguities.<br>Supported by majority of Member States<br>Better market transparency and consumer information   | Reduced time delays for amicable procedures in conflicting cases.<br>Controversial issues: solutions not evident.<br>Certain solutions may increase administrative and control burdens.<br>Does not increase the visibility of the EU quality policy.<br>Does not ensure coherence among EU rules on protection of GIs<br>Difficult to explain to third countries during negotiations. |
| <b><u>Option B : create a single legislation for protection of geographical indications</u></b>               | Ensure coherence among EU rules on protection of geographical names<br>In line with better regulation and simplification<br>A single legal act and a single register would contribute to a better enforcement<br>Merging would support EC negotiation position in DDA on extension of protection beyond wines and spirits<br>Opportunity to extend environmental concerns currently spelt out in wine regulation to agricultural products as well.<br>Likely reduction of administrative burden regarding enforcement<br>Synergies in registration procedure and information | Need for preserving some specificities of the 4 systems and transitional period for wine and spirits drinks.   |

|   |   |  |
|---|---|--|
|   | campaigns   |  |
| <b>Option C: create single register (wine, aromatized-wines, spirits and agricultural products)</b> | A single register would be consumers –friendly and easy for operators and administration use  | Names in the register would enjoy different level of protection (wine against services) and control  |
| <b>Option D: merging of PDO and PGI definitions</b>   | It would bring EU GI definition closer to TRIPS definition<br>Would make easier negotiations with 3C on protection of geographical indications<br>It would help providing consumers a clearer message on products’ characteristics linked to geographical origin  | Some Member States strongly against. EP and EESC against.<br>Two different types of geographical origin (PDO-PGI) originally introduced to reflect existing national experiences=>likely difficult implementation<br>Inconsistent with recent graphic differentiation of PDO and PGI symbols<br>Inconsistent with recent wine reform<br>It would drive down the intensity of the link between product and <u>geographical origin</u>   |
| <b>Option E: introduction of national systems of protection</b>                                     | Possible reduction of administrative burden for small businesses producing “micro GIs”<br>Increased interest from small farmers in applying to the GI scheme<br>Positive effect on local employment<br>Possibility - within the EU framework - to address at national level specific concerns (e.g. environmental)<br>Reduce Commission burden of approving names at EU level | Could fragment the single market<br>Current system was created to avoid recurrent problems related to non-harmonised national systems<br>Definition of trade criteria would be difficult<br>Risk of consumer confusion (proliferation of national logos)<br>Enforcement and competition problems linked to the protection of names<br>A national list system identifying local product for promotion and visibility purposes that <i>excludes</i> name protection could reduce or overcome many of these difficulties. |



## Comparison of retained options by specific objectives

| SPECIFIC OBJECTIVES<br><br>➔  | Provide clearer information on products characteristics | Provide simpler and single approach at EU level | Ensure uniform respect of IPR |
|---|---|---|-------------------------------|
| <b>Option A: Status quo improved</b>  | Situation improved                                      | Situation unchanged                             | Situation improved            |
| <b>Option B: creation of a single legislation for protection of geographical indications in wine, spirits and agri-products</b> | Situation improved                                      | Situation improved                              | Situation improved            |
| <b>Option C: creation of a unique register for protected geographical indications</b>   | Situation improved                                      | Situation deteriorated                          | Situation slightly improved   |
| <b>Option D: merger PDO/PGI definitions</b>   | Situation deteriorated                                  | Situation improved                              | Situation unchanged           |
| <b>Option E (with national protection)</b>  | Situation deteriorated                                  | Situation deteriorated                          | Situation deteriorated        |
| <b>Option E (with national list, but without name protection)</b>   | Situation improved                                      | Situation unchanged                             | Situation unchanged           |

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.

Among the options retained, option B (creation of a single legislation for protection of geographical indications) and option A (status quo accompanied with streamlining of EU procedures and clarification of rules) show the highest objectives achievement.

### Summary of comparisons

| Evaluation criteria<br>➔ | Effectiveness (How well it will solve the problems?) | Efficiency (is this the most we can get for the money?) | Consistency (is it in line with other Commission objectives and strategies?) |
|--------------------------|--|---|--|
| Options<br>↓             |  |   |  |

|  |    |    |    |
|--|----|----|----|
| Option A: Status quo improved  | ++ | ++ | +  |
| Option B: creation of a single legislation for protection of geographical indications in wine, spirits and agri-products | ++ | ++ | ++ |
| Option C: creation of a unique register for protected geographical indications   | ++ | +  | +  |
| Option D: merger PDO/PGI definitions   | -- | -- | 0  |
| Option E: creation of National systems (with national protection)  | -- | 0  | -- |
| Option E: creation of National systems (with national list, but without name protection)                                 | ++ | +  | ++ |

Option B (creation of a single legislation for protection of geographical indications in wine, spirits and agri-products) and option A (status quo improved) score the highest on effectiveness, efficiency and consistency.

## 8. MONITORING AND EVALUATION

An intermediate evaluation of the PDO/PGI policy (for agricultural products and foodstuffs) was conducted in 2008. The evaluation identified problems in monitoring the objective aiming at improve incomes of farmers and ensure that the system contributes to rural economy. The evaluation partly addresses the implementation at Member state level.

The following core progress indicators are proposed and will be developed during preparation of the initiative:

| Objectives  | Core progress indicators   | Monitoring arrangements   |
|---|--|---|
| Provide clearer information on products specific characteristics linked to geographical origin, enabling consumers making more informed purchase choices. | Degree of recognition of the EU quality schemas and symbols.                                   | EU periodical survey both on the consumer perception of the EU quality schemas and the recognition of the EU logos. |
| Provide simpler and single approach at EU level for a system of protection of names for products with specific qualities linked to                        | Number of registered PDO/PGI names.<br><br>Degree of operators' satisfaction with registration | Monthly statistics of the PDO/PGI registry<br><br>Annual statistics on the  |

|  |                                 |  |
|--|---------------------------------|--|
| geographical origin  | and enforcement procedures.     | number of formal complaints  |
| Ensure uniform respect - throughout the EU - of the intellectual property rights related to the names included in EU register. | Number of IPR enforcement files | Monitor multiannual plans on control.<br><br>Monitor annual reports on control |

Although there is no legal requirement for Evaluation under PDO/PGI policy, evaluation arrangements can be useful to report on the achievements of the policy, both for the EU and the implementation in the Member States.

## 9. CONCLUSION

At the end of this analysis a number of options have emerged that would contribute substantially to the greater overall coherence and consistency of geographical indications protection policy. These are:

- Option B, creation of a single legislation for protection of geographical indications in wine, aromatized-wines, spirits and agricultural products.
- Option A, status quo improved, which would bring benefits to the agricultural products and foodstuffs scheme, and
- Option C, creation of a unique register for protected geographical indications, covering all the schemes.

The question of the cost of the GI system, mainly for the producers will only be partially addressed by this option. The main costs for GI already in place are related to the need to ensure a specific quality (compliance with specifications) and guarantee as to the origin of the product (certification or control costs). Those costs are intrinsic to the credibility of the guarantee of authenticity and cannot be reduced significantly (for example switching to "producer declaration" only without third party checking) without undermining that guarantee. Options A, B, C or D, which maintain certification costs and maintain credibility would not contribute to a significant reduction. However, those options would improve the visibility and effectiveness of the GI system(s), and so facilitating a better return from the market, and hence improve the ratio of cost (of controls)/benefit (income)..

Variation in the types of application procedures between Member states is not a significant part of the problem neither of costs of certification controls. This is not addressed by the options, but could be addressed through specific bilateral assistance as well as increasing visibility and communication about the system. In that sense initiatives such as production of a guide to applicants could be an useful tool to facilitate applications from all MS.

Option E (allowing national systems for protection of geographical names) would fully respond to the demand of small producers to better communicate on the marketing in a local context, as it could contribute positively to the objective to improve income of farmers and develop rural economies. Nevertheless, as a stand-alone option and with some protection granted to national names (sub-option 1), it would present serious drawbacks compared with a simpler and single approach at EU level and pose threats to the functioning of the single market. In addition for the smallest enterprises most put-off

by the strict application of EU-level GI rules, simply switching the rules to national level, does not provide improvements. However, if the national option is considered as a way of identifying local product and local producers as a marketing tool, without registering and protecting specific names (sub-option 2) and without heavy controls of certification, the option could meet the needs of the smallest producers, currently de facto excluded from the EU protection schemes, and improve information flow to consumers of such products. In such case it can be combined with options A, B and C.

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## ANNEX I: COST OF PDO/PGI SCHEME

There is no comprehensive data available on the costs of preparing and running a PDO/PGI scheme. Since 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 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 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 €. In on Member States, a recent study showed that the cost of preparation of a PDO/PGI application (based on 2 recent applications) was estimated to 20.000€ to 40.000 €. It corresponds to 6 to 12 month's salary, and includes compiling scientific evidence, research and negotiation with authorities.

Although a membership to a producer group is deemed to be voluntary, cost of joining 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 of the registration procedure are borne by public authorities. Cost may vary according, the number of activities carried out by public authorities: assistance, promotion, etc. The 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 cost of application process was evaluated, including objection process up to 10.000 € per application. Another Member State also provided similar figures, on the basis of an 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 scrutinizing application for registrations, statements of objections, applications for amendments and request for cancellation. According to the PDO/PGI Evaluation one Member State charges 900 € for a 4 page application and in another one the fee for a PDO/PGI application amounts to 430 €.

### **3. Cost of registration at EU level**

No fee is asked for the registration procedure at EU level. Costs are due to full time equivalent (FTE) staff assigned to scrutinize 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), type of product (for example seasonal), degree of requirement established in the specification, on the average of inspection visits, etc.

Cost of certification can be annual fee or depend on volume. Findings show that in some cases "consorzio" negotiates with 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. In some cases, public authorities carry out the control, free of charge.

A study carried out in one Member State show that costs of control are higher if carried out by public system. Certifications cost vary from 61 €/ha to 158 €/ha in public control system and from 31 €/ha to 41 €/ha in private control system.

In a study carried out in another Member State in 2009, cost of certification has been estimated to 100-300 €/year/farm. It has been calculated taking into account both:

- Control which includes transport to the farm (1/2 hour), inspection (1.5 - 2 hours), report (1 hour), implementing into monitoring system. The control cost varies from 57-100€/hour.
- Membership to the group, who manages a database, reports on statistic, and organise information activities.

Other examples are, 0.3 €/Kg for cheese, €0.24 per chicken and 0.75€/ton 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 in general, producers rarely mention administrative cost to be a burden and they are not generally mentioned. Preparation of documents and preparation of controls are not considered a major cost.

General administrative costs (monitoring costs included) for one PDO chicken are estimated at € 0.3 per chicken and at € 0.4 per tonne in the case of a PGI rice. This cost has been estimated taking into account one day per week of a full-time employee in the case of the PDO chicken and half day per week in the case of the PGI rice.

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 one Member State, 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 cost of the protection provided to PDO/PGI, due mainly to organizational aspects :

- Competence can be shared between central and regional administrations (Germany, Spain), or several administrations (INAO/DGCCRF in France); Or
- Enforcement is fully integrated with food law controls or the responsibility of agencies/bodies such as Trading standards (United Kingdom).
- Enforcement is shared between public (regional) and producer group's structure (Spain and Italy).

In addition, enforcement cost depends also on periodicity of inspections.

In Spain for example, some tasks are being supported by the administrations, such as: regular visits to the Regulatory Councils; monitoring of the control of compliance or monthly information meetings with scheme participants and potential users. However, the authorities have not been able to quantify costs. It is important to note that in Spain an important part of monitoring and assistance costs related to the functioning of the scheme are diverted to the Regulatory Councils, which deals with firsthand controls and information requirements by producers.

In another decentralised country (Germany), it is the public authorities (for Agriculture) at the federal level are responsible for monitoring (Control authority for food, control for misuse).

In some cases the tasks on control and monitoring are not considered in a separate way as to normal business from public authorities (which includes preparation of applications). In Greece the Ministry does not consider the services it provides under the optic of a separate “cost”. According to their answers 2 persons are full time occupied with the scheme, who may receive seasonal help as well. They assist producers to prepare files and this service is provided for free, along with assistance for revisions or complaints. One certification body explained that it has many more people working on the scheme right now, but few of them are permanent in their positions and therefore new seasonally employed staff have to be re-educated each time. For producers, the only costs they have to pay are registering and checking costs that they pay to the certification body. Since there is no overall monitoring system of the PDO-PGI scheme by the public authorities, no costs are incurred by producers either. Another issue that should be mentioned here is the linking of the scheme with the extra quality subsidy farmers receive. Producers of olive oil have mentioned during the research that the administrative burden of registering the farmers that actually produce PDOs-PGIs is placed on them, as they are ‘made’ to keep records of the farmers that bring their olive oil in and report them to the public authorities. This has created unnecessary economic and resources burden on these companies that do not benefit from the whole process at all.

The Danish Veterinary and Food Administration reports that it is impossible to estimate the costs of monitoring the PGI/PDO scheme as it is part of general costs for food control. One Member State control authority estimates costs in number of Full Time Equivalent (FTEs) staff per year as: 0.3 FTEs staff for the application process and objection process, 0.3 FTEs staff for general administrative burden, 0.05 FTEs staff for monitoring costs and 0.05 FTEs staff for enforcement.

In another Member States, there are no regular enforcement costs, because there are no human resources to carry out controls for the protection of PDO/PGI products on the market.



## ANNEXE II: OPTION A

MAINTENIR LE STATUT QUO, AVEC RACCOURCISSEMENT DES PROCEDURES ET AMELIORATIONS A LA LEGISLATION DES PRODUITS AGRICOLES ET DENREES ALIMENTAIRES.

### Contexte :

Les principes de la législation actuelle sont : niveau élevé de protection, protection assurée par les Etats membres (administrative), enregistrement par la Commission après un examen de la demande et coexistence avec marques antérieures.

Cependant certains aspects doivent être clarifiés, d'autres simplifiés et les délais certainement réduits. Il y a aussi certaines améliorations à apporter, notamment à travers des règlements d'application.

### L'option et les changements à apporter à la législation

L'option consiste à adapter législation sur les AOP/IGP pour les produits agricoles et les denrées alimentaires (R(Ce) No 510/2006), en maintenant les mêmes principes, et en clarifiant la législation, la simplifiant et en réduisant les délais de procédure. Certaines améliorations seraient aussi introduites.

Les législations sur les vins et sur les boissons spiritueuses ne seront pas modifiées.

Les principales modifications, qui seront d'ordre technique sont :

- Clarifier la date "cut-off" en relation avec les marques (article 14§2, pour reprendre la formulation "vins), clarifier les exceptions au droits des marques (article 3 §4); clarifier les définitions d'AOP et IGP (question de l'unicité de l'aire, situation spécifique pour certains produits (viande), alignement aux définitions de l'ADPIC).
- Clarifier la protection administrative.
- Clarifier les critères pour définir les noms génériques;
- Clarifier les rôles des groupements de producteurs,
- Simplifier la procédure, la rendre commune avec la procédure des STG et raccourcir les délais d'examen et de procédure (opposition de 6 mois à 2 mois, examen de 12 mois à 6 mois), simplifier les modifications des cahiers des charges, faciliter l'annulation des noms protégés (à la demande de la Commission et dans le cas pas de production a lieu dans l'aire géographique), réduire les motifs d'opposition pour les rapprocher de ceux de la législation vin.

Les nouveaux délais qui seront proposés (en gras) pour les produits agricoles sont :

| Months | Scrutiny (maximum) <sup>60</sup> | Publication for objection <sup>61</sup> (2) | Objection | Publication for registration (2) | Total |
|--------|----------------------------------|---|-----------|----------------------------------|-------|
|--------|----------------------------------|---|-----------|----------------------------------|-------|

<sup>60</sup> Maximum scrutiny delay and objection delay are defined by EU regulations.

<sup>61</sup> Publication delays for objection and registration include CIS + Translations + Check by the unit + Adoption + Submission to OPOCE for publication.

|                                      |          |   |          |       |                |
|--------------------------------------|----------|---|----------|-------|----------------|
| Agricultural products and foodstuffs | <b>6</b> | 2 | <b>2</b> | 1.5-2 | <b>11,5-12</b> |
|--------------------------------------|----------|---|----------|-------|----------------|

- Elargir le système de contrôle du produit à toute la chaîne (comme dans le système de l'agriculture biologique). Imposer l'accréditation aux organismes de certification des AOP/IGP provenant des pays tiers.

- Permettre l'inclusion dans le Registre des AOP/IGP européennes, des noms protégés qui découlent des accords bilatéraux.

- Changer (par acte déléguée) quelques caractéristiques du logo, pour le rendre plus attirant par les opérateurs, notamment en supprimant la mention qui figure à l'intérieur, ce qui résoudra les problèmes de fragmentation du marché intérieur.

- Prévoir un budget pour la protection des mentions et des symboles Européens.

Des lignes directrices sur l'étiquetage des produits transformés seront aussi adoptées dans le paquet qualité. De même, à ce stade, il n'est pas prévu que la question des rôles et droits des groupements de producteurs soit évoquée dans ces lignes directrices.

Des lignes directrices sur la place de la durabilité des cahiers des charges seront aussi préparés (à un stade ultérieur). Elles visent à clarifier que, à l'initiative des producteurs, des règles de durabilité pourraient être introduites dans les cahiers des charges.

## ANNEXE III: OPTION B

CRÉER UNE LÉGISLATION UNIQUE EUROPÉENNE POUR LA PROTECTION DES INDICATIONS GEOGRAPHIQUES ET APPELLATION D'ORIGINE (AOP/IGP) POUR TOUS LES PRODUITS AGRICOLES (Y INCLUS LE VIN) ET LES DENRÉES ALIMENTAIRES (Y INCLUS LES BOISSONS SPIRITUEUSE ET LES VINS AROMATISÉS).

Le système unique (Règlement) couvrirait l'enregistrement (reconnaissance) et la protection des AOP/IGP pour les produits agricoles et les denrées alimentaires et les demandes futures pour les vins, vins aromatisés et boissons spiritueuses des Etats membres et des pays tiers.

La réforme de l'OCM vitivinicole prévoit un délai d'adaptation pour les AOP/IGP vitivinicoles jusque fin 2014. Dans ce sens, il est prévu qu'entre 2010 et 2014, la totalité des AOP/IGP des vins sera enregistrée dans le système européen selon les règles actuelles. Le règlement sur les boissons spiritueuses prévoit aussi un délai d'adaptation pour mettre en conformité les IGs des Etats membres jusque fin 2015.

### **Les différences techniques dans les quatre règlements**

Les dispositions AOP/IGP contenues dans la nouvelle OCM Vin se sont largement inspirées du règlement (EC) No 510/2006 en l'améliorant aussi sur certains points (ex. Marque vs. AOP/IGP) et du règlement 207/2009 sur la marque communautaire (en matière de procédural). Ainsi, une fusion des législations AOP/IGP produits agricoles avec le vin est facilement réalisable d'un point de vue technique. En ce qui concerne les spécificités du secteur du vin (mentionnées ci-dessous) du point de vue technique elles peuvent être préservées.

L'intégration demandera plus de travail pour les boissons spiritueuses car le règlement (CE) No 110/2008 sur les boissons spiritueuses est beaucoup moins détaillé que celui sur le vin. Cependant le règlement (EC) 510/2006 contient déjà des produits industriels comme les bières et les produits de la boulangerie, donc l'insertion des boissons spiritueuses ne devrait pas poser de problèmes techniques. Pour ce qui est des boissons aromatisées, qui ne couvre que 4 IGs, il est actuellement en refonte, et donc il pourrait s'intégrer aussi dans le paquet qualité.

Enfin le paquet qualité ne serait d'application pour les deux secteurs vins et boissons spiritueuses qu'à partir de 2015, à savoir après les périodes de transitions prévues dans les législations respectives, ce qui assurera que les deux secteurs pourront consolider les IG, en suivant leurs règles spécifiques.

### **Questions techniques :**

- Toutes les simplifications et raccourcissements de l'option A seraient reprises dans le règlement commun.
- Les dispositions régissant les AOP/IGP vitivinicoles<sup>62</sup> seraient retirées de l'OCM Unique pour être refondues dans la législation (Règlement) horizontale AOP/IGP.

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<sup>62</sup> Règlement (CE) n° 1234/2007 du Conseil, du 22 octobre 2007, portant organisation commune des marchés dans le secteur agricole et dispositions spécifiques en ce qui concerne certains produits de ce secteur (règlement «OCM unique») (J.O. n° L 299 du 16/11/2007, p. 1.)

- Les dispositions IG prévues par les réglementations des boissons spiritueuses<sup>63</sup> et des vins aromatisés<sup>64</sup>.
- Prise en compte des spécificités du vin reconnues en 2008 (ex: règle des 85 % des raisins provenant de l'aire délimitée pour une IGP; principe de la production dans l'aire délimitée sous réserve d'exceptions encadrées, etc.);
- les périodes transitoires pour le vin et les spiritueux jusqu'en 2015.
- Procédure commune pour enregistrement des AOP/IGP des quatre secteurs.
- L'ensemble des AOP/IGP disposera du même logo européen.
- Dispositions de contrôles administratifs communs pour les quatre secteurs.
- Harmonisation vers le haut la législation AOP/IGP en reprenant les points positifs pour tous les produits dont bénéficient actuellement seulement certains secteurs (ex: l'extension de la protection aux services (limité aux produits vitivinicoles), la procédure administrative pour objection (qui n'existe pas dans la législation boissons spiritueuses; etc.).
- uniformisation du processus administratif pour les boissons spiritueuses.
- Le nouveau système inclura aussi un registre unique (voir option 2), mais le fait d'avoir des règles uniques pour tous les secteurs résoudraient les problèmes techniques que pose l'option 2.

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<sup>63</sup> Règlement (CE) n° 110/2008 du Parlement européen et du Conseil, du 15 janvier 2008, concernant la définition, la désignation, la présentation, l'étiquetage et la protection des indications géographiques des boissons spiritueuses et abrogeant le règlement (CEE) n° 1576/89 du Conseil (J.O. n° L 39 du 13/02/2008, p. 16.)

<sup>64</sup> Règlement (CEE) n° 1601/91 du Conseil, du 10 juin 1991, établissant les règles générales relatives à la définition, à la désignation et à la présentation des vins aromatisés, des boissons aromatisées à base de vin et des cocktails aromatisés de produits viti-vinicoles (J.O. n° L 149 du 14/06/1991, p. 1.).

ANNEX IV: COMPARISON BETWEEN PDO/PGI SYSTEMS FOR AGRICULTURAL PRODUCTS  
AND FOODSTUFFS, WINE AND SPIRITS DRINKS.

|  | Règlement (EC) No 510/2008 avec <b>option A</b>   | Vin, Règlement (CE) No 1234/2008   | Boissons spiritueuses, Règlement (EC) No 110/2008                          |
|--|---|--|--|
| <b>Definitions</b>   |   |  |  |
| Indications géographique protégée (IGP),                                       | Aligné à l'accord ADPIC   | Même définition mais avec une règle spécifique : 85% des raisins doivent provenir de l'aire.             | Même définition mais indication géographique uniquement (sans "protégée"). |
| Appellation d'origine protégée (AOP)   | Oui   | La même  | N'existe pas dans le texte boissons spiritueuses                           |
| Dérogations pour AOP,  | Oui, pour les anciennes AOP, certaines matières premières peuvent provenir d'une aire différente. | Oui, le raisins peuvent provenir d'autres zones avoisinantes.  | N/A  |
| Utilisation de noms traditionnels pour AOP et IGP (i.e. "Reblochon" ou "Cava") | Oui   | Oui pour seulement les AOPs: les noms utilisés traditionnellement<br><br>Oui par extension pour les IGPs | Oui  |
| <b>Protection</b>  |   |  |  |
| High level protection for "products"; terminology differs                      | Niveau élevé de protection (TRIPS +)  | Niveau élevé de protection (TRIPS +), mais aussi vis-à-vis des services.                                 | La même que produits agricoles.  |
| Protection administrative  | Rôle des EM davantage précisé   | Oui, mais moins détaillé.  | Oui, mais moins détaillé.  |
| Audit aux activités de contrôle des EM   | Oui, EM obligés à réaliser des plans pluriannuels d'audit et rapports de suivi annuels.           | Non  | Non  |
| Coexistence des systèmes de protection national et EU.                         | Protection nationale transitoire jusqu'au moment de l'enregistrement ou                           | Même type de dispositions<br><br>Coexistence avec les IG nationales                                      | Yes  |



|  |  |  |  |
|--|--|--|--|
|  | rejet européen   | antérieures au 1.8.2009  |  |
| <b>Relation avec les marques</b>   |  |  |  |
| Marques postérieure à l'IG ne peut pas être enregistrée  | Oui, les dates sont celles des demandes.   | Même dispositions  | Pas de dates précisées.                                      |
| Date pour définir la coexistence entre une marque antérieure et une IG coexistence date  | Oui, claire  | Même dispositions  | Date erronée   |
| <b>Register/database</b>   |  |  |  |
| Creation of a register   | Physical register maintained at Commission premises in Brussels                  | Electronic. "E-Bacchus"  | Annex III of regulation for spirit drinks                    |
| Database   | Yes, with registry data and documentation  | As register  | Under construction   |
| Availability of specification (website).   | Yes  | No (planned)   | No (partially)   |
| <b>Procedure</b>   |  |  |  |
| Maximum indicative delay for examination   | 6 months   | No delay   | 12 months  |
| <b>Objection</b>   |  |  |  |
| Existence objection procedure prior to registration  | Yes, 2 months  | Yes, 2 months  | Yes, 6 months  |
| Grounds for objection (general)  | Yes, detailed (terminology different from wine); process different (substantive) | Yes, detailed (terminology different from ag products) process different (eligibility / substantive) | General ground; (terminology different) process substantive. |
| Grounds for objection prior (non-renowned) trade mark  | Yes, specific  | Not specifically   | Not specifically   |
| Grounds for prior trade mark to prevent registration of GI if TM has reputation and renown and registration would mislead consumer to true identity of product | Yes (terminology differs)  | Yes (terminology differs; no length of time mentioned)   | Not specifically   |
| Appropriate consultations after objection  | Yes, 3 months  | No   | No   |
| <b>Controls</b>  |  |  |  |
| Controls of compliance with  | Name of control  | Same as  | No name of control body                                      |

|   |  |   |  |
|---|--|---|--|
| specifications                                  | body indicated in the specifications, but no rules on frequency and type of controls. Only mentioned control before market place | 510/2006 and details on frequency (yearly) and type of analysis (analytic and organoleptic). Control during production and before market place. | nor details of type of inspections in the specifications requested |
| <b>Others</b>                                   |  |   |  |
| Grounds for cancellation                        | Yes  | detailed  | Yes  |
| Coexistence with unregistered name              | Yes (max 5 or 15 years)  | No  | No   |
| Cahiers des charges progressif                  | Yes (15 ans)   | No  | NO   |
| Specific national procedure prior to submission | Yes  | Yes   | No   |

## ANNEX V: OPTION C

### CRÉER UN REGISTRE DES AOP/IGP PROTÉGÉS SOUS LA LÉGISLATION DES PRODUITS AGRICOLES ET ALIMENTAIRES, DU VIN ET DES BOISSONS SPIRITUEUSES

#### **Contexte**

Aujourd'hui plusieurs outils listent les noms protégés en tant qu'AOP/IGP dans l'UE:

- le registre "E-Door" pour AOP/IGP des produits agricoles et alimentaires;
- l'annexe B pour les indications géographiques des boissons spiritueuses;
- le Registre "E-Bacchus", pour les vins, et;
- l'annexe II de la législation sur les vins aromatisés.

De plus, les accords bilatéraux signés avec les pays tiers (ex: la Corée, l'Australie, le Canada les Etats-Unis, etc.) protègent aussi des indications, qui sont listées dans lesdits accords. Seul "E-Bacchus" liste pour le moment les indications géographiques vin des pays tiers.

#### **L'option**

L'option consiste à créer un seul "Registre" qui inclurait toutes les AOP/IGP et indications géographiques protégées dans l'Union européenne en vertu des quatre législations et des accords bilatéraux.

- Les noms figurant sur le Registre unique auraient le niveau de protection définis dans chaque législation.
- Le "Registre" aurait des effets légaux, et inclurait l'information strictement nécessaire pour assurer une bonne protection de l'IG : nom, produit et les références juridiques avec un lien directe à Eur-Lex.
- Le "Registre" devrait être accompagné d'autres instruments de communication, qui permettraient de rendre publique, uniquement à titre d'information à travers un site web de la Commission, d'informations complémentaires comme le cahier des charges original, l'organisme de contrôle, etc.
- Des modifications des règlements sur l'Organisation commune de marché unique, et le règlement sur les boissons spiritueuses seront nécessaire pour introduire dans la législation "vin" et la législation "boissons spiritueuses" des références au "Registre unique".

ANNEX VI: COMPARISON OF GI AND TRADE MARK

**Comparison of the GI and Trade mark/Collective/Certification marks systems<sup>65</sup>**

|   | GEOGRAPHICAL INDICATIONS (GIs)   | COLLECTIVE TRADE MARKS  |  |
|---|--|---|--|
|   |  | COLLECTIVE TRADE MARK <i>STRICTO SENSU</i>  | CERTIFICATION TRADE MARK*  |
| <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 trade mark lays down rules on the Community collective mark  | - MS National laws.<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)        |
| <b>Owner/right holder</b>                                   | - not explicitly identified in EC regulations  | Collective ownership , public or private<br><br>Owned by the collective   | Collective ownership, public or private  |

<sup>65</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.

|                               |   |   |  |
|-------------------------------|---|---|--|
|                               | <p>- complex and controversial in legal literature. Some commentators: difference between holder of the right “over” the appellation and “to” the appellation.</p> <p>- conferred to all producers of the area complying with specification, not necessary to be part of a collective group</p> | body which exclusively grants its members the right to use it   | Owned by a certification authority   |
| <b>Use</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> | -I ndefinite protection   | subject to periodical renewal<br><br>10 years   | subject to periodical renewal<br><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><br>"Absolute" protection   | <p>- Does not prevent other producers from registering similar signs, providing that they do not result in a likelihood of confusion</p> <p>- “First in time, first in right” applies: who uses the CTM first gets the protection to the exclusion of all others.</p> | <p>- Does not prevent other producers from registering similar signs, providing that they do not result in likelihood of confusion</p> <p>“First in time, first in right” applies: who uses the CTM first gets the protection to the exclusion of all others</p> |
| <b>Enforcement/Mean</b>       | Mix of public ( <i>ex officio</i> ) and private   | Only private action   | Only private action  |

|                                       |  |  |  |
|---------------------------------------|--|--|--|
| <b>of protection</b>                  | 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.

## ANNEX VII: OTHER USES OF NAMES

### Confusion in level of protection against other uses, notably: long usage, varieties and breed names, trade marks, generic, and continued/changing uses in future and all these in translation

Under European provisions on geographical indications, 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. Depending on the circumstances, the objection might prevent registration of PDO/PGI (which will then be rejected). The regulation provides that 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.

Among the aspects for which clarifications have been asked by the Green Paper stakeholders most often indicated:

- the need to clarify the rights, duties and tasks of applicant groups. 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.
- implementation of Articles 13 and 14 of Regulation(EC) 510/2006:

Some respondents (INTA and INBEV) have asked to better define the concepts on the scope of the protection which 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. In particular, difficulties may arise of not knowing scope of protection for matters as translation distant from original and evocation not understood until years later (the Court considered 'Parmesan' was in Germany an evocation of 'Parmigiano Reggiano'). These two organisations stated that if 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 trade marks.

Furthermore, the grounds for coexistence may appear unclear, particularly regarding some forms of intellectual property right. Referring to this, INTA and INBEV and a national authority (NL) expressed some concern regarding the provisions governing coexistence of GIs and trade marks. 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 trade mark 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.

- language of some grounds for an objection:

There appear to be some cases of prior usage where an objection cannot be filed even though registration would prevent that usage. This does not allow such prior users the opportunity to defend their interests. In this regard some potential problems were identified when:

10. language of some grounds of 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;
  11. some grounds for an objection do not qualify as sufficient to prevent registration and the only result is cessation of use, while the objection may permit a limited transition period.
- some unclarities as to describe "similar" uses:
    12. "conflict" under criteria of Article 7(3)(b): registration would be contrary to Article 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
    13. "confusion" criterion: Article 7(3): "actual risk of confusion"
    14. "similar", "evocation..." Article 13 on protection
  - lack of clarity as to the notion of "comparable" products (and differences as to the notion of similar in trade mark law).
  - complexity as to phase-out periods:

The regulations provide with different phase-out periods like "adjustment period" (up to 5 years) as well as "transition period" (up to 5 years but is often considered too short) and "super-transition period" of 15 years.



## ANNEX VIII: SUMMARY OF ENVIRONMENTAL IMPACTS

The environmental benefits of the GI protected goods are often achieved through indirect effects. Short PDO/PGI production chains (production, processing, supply and marketing) derived shorter transport distances reducing the use of natural resources and energy. In some cases the premium price 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<sup>66</sup>.

According to another sources, 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 these places, and specific tastes and flavours (Bowen and Valenzuela Zapata 2009).

### CASE STUDIES CONDUCTED IN IPDEV PROJECT

|                             | <b>Overall assessment</b>   | <b>Most important effects (positive/negative).</b>  |
|-----------------------------|---|---|
| Jersey Royal Potatoes (PDO) | 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>(-+) 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.</p> |

<sup>66</sup> Leipprand, Gorch, 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>

|  |   |  |
|--|---|--|
|  |   | <p>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 PDO cheese production linked to producer interest in conservation, animal welfare, organic production, other traditional products.</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 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> |
| Spreewald gherkin (PGI)                              | <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>   |
| Schwäbisch-Hällisches Qualitätsschweinefleisch (PGI) | <p>Pig keeping according to production guidelines is clearly beneficial compared to conventional/industrial pork production. Organic branch exists.</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>  |

|                               |   |   |
|-------------------------------|---|---|
|                               | Environmentally compatible production is declared aim of the producers' group; group is involved in environmental projects.   | (+ compared to standard pork) reduced energy demand due to short transport distances and special pig housing facilities   |
| Diepholzer Moorschnucke (PDO) | 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.   | (+) regeneration and conservation of moorlands (under supervision of environmental NGO)<br><br>(+) no or very little fertiliser and plant protection products<br><br>(+) sheep grazing contributes to favourable nutrient balance and maintaining nutrient-poor soil conditions<br><br>(+) maintenance of habitat for many rare and endangered species<br><br>(+) re-establishment of endangered breed benefits agro-biodiversity<br><br>(+) 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.  | There are two organic cheese producers within the PDO (one experimental farm). Extensive model of production which competes with more intensive models (caw milk).<br><br>(+) Environmental impacts are low.<br><br>(+) Contribution to landscape maintenance. Landscapes are often described as “semi natural” due to repetitive, seasonal grazing of transhumant flocks.<br><br>(+) Biodiversity: preservation of autochthonous (not highly productive in terms of quantities produced) sheep. Latxa and Carranzana (Carranzana in danger).<br><br>(+) Biodiversity: creation of diverse habitats in mountains –mosaics-.   |
| 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 (recognized by Rural Development EC rules). Producers committing to the preservation of “traditional” rice production receive economic aids. (+++) | 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.<br><br>(+) 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.<br><br>(+) Soil erosion is low. Floods guarantee permanent input of sediments (loam).<br><br>(+) Rice paddies are part of the landscape, and has been for centuries.<br><br>(+) Biodiversity: The area is of enormous importance for migrating/ water birds. Rice fields provide, |

|                     |  |  |
|---------------------|--|--|
|                     |  | <p>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 rationalized. 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> <p>(-) Air: rice hay which cannot be recycled is burnt.</p>   |
| Sierra Mágina (PDO) | <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 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</p> |

|  |  |  |
|--|--|--|
|  |  | Sierra Mágina groves, although less harmful than completely intensive groves, are not sustainable. |
|--|--|--|

Source: IPDEV – summary of case studies.

ANNEX IX: ADDED VALUE OF PDO AND PGI SCHEMES, IN CHEESE SECTOR.

| AGRIVIEW market prices        |                | added value of PDO |                            | added value of PGI |                            |
|-------------------------------|----------------|--------------------|----------------------------|--------------------|----------------------------|
| Cheddar                       |                | €/kg               | % of standard market price | €/kg               | % of standard market price |
| €/kg 2005                     | 2,88           | 3,34               | 115,81                     | 1,94               | 67,40                      |
| €/kg 2006                     | 2,55           | 3,42               | 134,29                     | 2,02               | 79,27                      |
| €/kg 2007                     | 3,16           | 3,18               | 100,51                     | 1,81               | 57,16                      |
|                               | <b>average</b> | <b>3,31</b>        | <b>116,87</b>              | <b>1,92</b>        | <b>67,94</b>               |
| <b>Edam</b>                   |                |                    |                            |                    |                            |
| €/kg 2005                     | 3,3            | 2,92               | 88,35                      | 1,52               | 46,09                      |
| €/kg 2006                     | 3,16           | 2,81               | 89,06                      | 1,41               | 44,66                      |
| €/kg 2007                     | 3,52           | 2,82               | 80,01                      | 1,45               | 41,08                      |
|                               | <b>average</b> | <b>2,85</b>        | <b>85,81</b>               | <b>1,46</b>        | <b>43,95</b>               |
| <b>Cheddar + Edam average</b> |                |                    |                            |                    |                            |
| €/kg 2005                     | 3,09           | 3,13               | 101,15                     | 1,73               | 56,02                      |
| €/kg 2006                     | 2,86           | 3,12               | 109,26                     | 1,72               | 60,11                      |
| €/kg 2007                     | 3,34           | 3,00               | 89,71                      | 1,63               | 48,69                      |
|                               | <b>average</b> | <b>3,08</b>        | <b>100,04</b>              | <b>1,69</b>        | <b>54,94</b>               |

A cheese PDO adds on average 117% to the market price of Cheddar, and 86% to the market price of Edam.  
A cheese PGI adds on average 68% to the market price of Cheddar and 44% to the market price of Edam.

A cheese PDO adds on average 100% to the average market price of Cheddar and Edam.  
A cheese PGI adds on average 55% to the average market price of Cheddar and Edam.

PDO and PGI prices are calculated from the Database:

|           | PDO  | % of Cheddar price | PGI  | % of Cheddar price |
|-----------|------|--------------------|------|--------------------|
| €/kg 2005 | 6,22 | 215,81             | 4,82 | 167,40             |
| €/kg 2006 | 5,97 | 234,29             | 4,57 | 179,27             |
| €/kg 2007 | 6,34 | 200,51             | 4,97 | 157,16             |
|           |      |                    |      |                    |
|           |      | % of Edam price    |      | % of Edam price    |
|           |      | 188,35             |      | 146,09             |
|           |      | 189,06             |      | 144,66             |
|           |      | 180,01             |      | 141,08             |

## **Question 5**

### ***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?***

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 contributions. Among the aspects for which clarifications have been asked most often, were the need to clarify the rights, duties and tasks of applicant groups (National Authorities did not raise it though); the application of articles 13 and 14 of Regulation (EC) No 510/2006 and the use of geographical indications as ingredients (this issue is treated more extensively under question 8).

### ***What criteria should be used to determine that a name is generic?***

Through all the contributions which have been received in answer to this question, the jurisprudence of the European Court of Justice has been highlighted as the most important source to take into account when determining if a name is generic or not. Some suggested working on a case by case basis on the basis of this jurisprudence of the European Court of Justice (ECJ) and the current criteria included in Regulation (EC) No 510/2006.

In addition several respondents highlighted one or more specific criteria, like: situation in the country of origin; perception of the consumer; lack of a link with the geographical area; existence of a standard in the Codex Alimentarius; duration of the use of a name etc. There were mixed feelings on establishing (or not) a list of generic names. In total more than 20 different criteria have been proposed.

### ***Are any changes needed in the geographical indications scheme in respect of:***

#### ***– the extent of protection?***

Whereas a majority of processing organisations, general public and academic organisations expressed against any changes with regard to the extent of protection, a majority of farming organisations, regional authorities and quality organisations (category 'other') were in favour. As for national authorities opinions were equally divided.

It was requested by several respondents to extend the TRIPS (Trade-Related aspects of Intellectual Property Rights) protection of wines and spirits to all other products and to create an international register for geographical Indications (GI's). At the same time it was asked to improve the protection outside the EU through bilateral agreements with third countries (this issue is treated also under question 7).

#### ***– the enforcement of the protection?***

Within all categories it was estimated there is a need for a better administrative enforcement of protection within and between Member States. To a lesser degree, some indicated the enforcement of protection in third countries is a problem.

A majority of respondents emphasized that this should be done by clarifying and harmonizing at EU level the responsibilities, investigation procedures and sanctions of national control bodies to guarantee an equal application in all Member States.



***– the agricultural products and foodstuffs covered?***

In contrast to the processing sector where a clear majority expressed against any extension, a majority of the general public, national and regional authorities, academic organisations/think tanks and quality organisations expressed in favour for extension of the scope of products. About as many farming organisations were in favour and against an extension.

Suggestions for new products to be covered included processed products, distillates for human consumption not made from wine, natural products (e.g. wild berries), ice-cream based on milk and water, artisan products, textile, cigars, silk or wood. However, some organisations explicitly expressed against including non-agricultural products.

***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 could be complementary. Several farming organisations indicated that collective trademarks could be interesting to use in the case of international trade in certain 3<sup>rd</sup> countries. Collective trademarks could 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 protected denominations of origin/protected geographical indications (PDOs/PGIs).

**Question 6**

***Should additional criteria be introduced to restrict applications for geographical indications? In particular, should the criteria for protected geographical indications, as distinct from protected designations of origin, be made stricter to emphasise the link between the product and the geographical area?***

The majority of respondents were against introducing additional stricter criteria for geographical indications. It is not the high number of names which weaken the system but the lack of communication. A vast majority of respondents asked for a better communication on current schemes and European symbol before adding new criteria.

More flexible criteria regarding the origin of raw materials were asked mainly by French contributions. The origin of the raw materials should be indicated if there would be a risk of misleading the consumers (see also question number 9 below).

Reinforcement of control by the Member States and a harmonised application among them was part of the raised issues as well as the need for an Agency to help the registration and management, harmonisation of implementation of legislation and controls. Besides, there was a proposal to merge the PDO and PGI schemes with a more flexible approach to origin and use of raw materials from outside the area.

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

***If so, what would be the benefits and drawbacks? If not, please explain***

A large majority of respondents from different sectors, with the exception of National authorities and individual consumers/farmers, were opposed to specific sustainability and other criteria. Among the number of those who expressed against such criteria, main disadvantage mentioned were the risk of consumers confusion and the risk of a reduction of benefits. Some who objected thought that this criterion could be made voluntary.

Respondents in favour underlined as main advantages better consumer information or the need to introduce environmental criteria. They also suggested that the criteria be voluntary.

### **Question 7**

***What kind of difficulties do users of geographical indications face when trying to ensure protection in countries outside the EU?***

There was a general concern of the lack of protection of GI in 3<sup>rd</sup> countries, mainly expressed by farming organisations and some Member states, but also by consumers (France).

Stakeholders identified problems they face when exporting EU products bearing geographical names protected as PDO and PGI. Third country organisation mentions that international trademark and fair trading regimes provide enough protection for brands.

The first set of problems concerned the protection provided by TRIPS. Stakeholders underlined the difficulties to enforce the protection provided by TRIPS, mainly because it was complex to prove the GI "status". Infringements of GI rights were also difficult to prove. Major problem was also the low level of protection provided by TRIPS (especially for products other than wine and spirits), and that the protection was reduced by the scope exceptions enshrined in Article 24.

The second set of problems was the relation to trademarks, when a previous trademark had already registered the name.

The third set of problems referred to the generic use of the protected name or its translation.

Problems related to counterfeiting were often mentioned as well as the fact that the EU did not sufficiently enforce bilateral agreements.

***What should the EU do to protect geographical indications in the most effective way in third countries?***

A majority of respondents supported the negotiation of bilateral and multilateral agreements in the framework of the World Trade Organisation (WTO) - a majority mentioned the TRIPS Council. Some stakeholders did ask for more proactive and strong positions in both arenas, bilateral and multilateral. As regard multilateral negotiations, a majority of stakeholders supported the creation of a legally binding register for GI's, for wine and spirits but also open to all goods. It was also mentioned the inclusion of GI's in the scope of Anti-Counterfeiting Trade agreement (ACTA). In bilateral agreements, although GI provisions should be included in every agreement, the idea to select strategic countries was raised by stakeholders in several responses.

### **Question 8**

***Have any difficulties arisen from advertising of PGI/PDO ingredients used in processed products/prepared foods?***

While negative answers (i.e. no difficulties arisen) were expressed explicitly, in a significant number of answers respondents simply declared themselves in favour of new rules on the advertising of PDO/PGI as ingredients without explicitly indicating whether actual difficulties had already arisen. Half of national authorities answers declared explicitly that no difficulty have arisen so far.

A majority of respondents was in favour of laying down rules on the use/advertising of PDO/PGI as ingredients so as to prevent misleading consumers.

### **Question 9**

***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?***

All sectors, besides the processing organisations, were in a large majority favourable to the identification of the origin of raw materials, mentioning as the main advantage better consumer information and awareness. Many mentioned that it would be justified and/or positive in the case of PGI. Some expressed that this information should stay rather optional.

The processing organisations were in a large majority against identifying the origin of raw material, mainly mentioning as a disadvantage the confusion of consumers. Some expressed the fact that it would not add anything to quality, or that it would be irrelevant for PGI.

Among the other sectors, a minority was against, mentioning as the main disadvantage the risk of confusion of consumers (underlining it in the case of PGI) and higher costs.

### **Question 10**

***Should the three EU systems for protection of geographical indications be simplified and harmonised? If so, to what extent?***

***Alternatively, should they continue to develop as separate registration instruments?***

The majority was in favour of the harmonisation of the 3 systems: agricultural products, wine and spirits, but keeping their specificity. The processing and trade organisations majority supported the current situation with 3 harmonised but separate systems.

The merging of the 3 systems, with a single register, was supported by third countries' respondents and some of the farmers' organisations.

The consumers were generally in favour of simplification and more coherence.