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# IMPACT ASSESSMENT REPORT

**on geographical indication protection for craft and industrial products**

***Accompanying the document***

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754**

{COM(2022) 174 final} - {SEC(2022) 193 final} - {SWD(2022) 114 final} -
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# Glossary

| *Term or acronym* | *Meaning or definition* |
|---|---|
| Appellation of origin | A special kind of geographical indication generally consisting of a geographical name or a traditional designation used on products which have a specific quality or characteristics that are essentially due to the geographical environment in which they are produced |
| Authenticity effect | Impact of the perceived authenticity of a product on the willingness to pay of a consumer |
| Certification mark | Sign indicating that a product or service complies with specific standards as certified by the owner of the mark |
| Cluster | Groups of firms, related economic actors and institutions that are located near each other and have reached a sufficient scale to develop specialised expertise |
| Collective mark | Sign indicating that the goods or services protected by the mark originate from members of an association, rather than from just one trader |
| Craft or handicraft products | Products produced by craftsmen, either totally by hand or with the aid of manual tools or including by mechanical means, whenever the direct manual contribution of the craftsman is still the most important component of the finished product |
| Cultural heritage | Shared source of identity encompassing a broad spectrum of resources in all forms and aspects, tangible and non-tangible |
| Evocation | Use of a geographical indication amounting to its imitation, even if the true origin of the goods is indicated, particularly by using terms such as “style”, “kind” or “type” |
| Geographical indication | Sign indicating the geographical origin of a product or service |
| Geographically rooted product | Product the quality or reputation of which is linked to its geographical origin, either by natural or human factors |
| Industrial products | Products made in a standardised way, typically on mass scale and through the use of machines |
| Less developed regions | Region where gross domestic product per inhabitant is less than 75% of the EU average |
| Monitoring | Control of the market (both offline and online) to ensure the correct use of protected signs, notably with regard to product specifications and general legal requirements |
| Non-genericity | Protection against being considered as generic |
| PTO | Patent and Trade mark Office |
| Price premium | The percentage by which a product's selling price exceeds (or falls short of) a benchmark price |
| *Sui generis* geographical indication | Intellectual property right protecting a geographical indication as such |
| Trade mark/Individual mark | Sign indicating the commercial origin of a product or service as stemming from a specific company |
| Traditional know- | Know-how, skills and practices that are developed, sustained and passed on from |

| *Term or acronym* | *Meaning or definition* |
|---|---|
| how | generation to generation within a community, often forming part of its cultural identity |
| Traditional specialties guaranteed (TSG) | Traditional Specialties Guaranteed highlights the traditional aspects, such as the way the product is made or its composition, without being linked to a specific geographical area |
| Verification | Control (typically prior to putting a product on the market) to ensure that a product has the required product characteristics and/or that it has been produced with the required materials and according to the required production steps |
| Willingness to pay (WTP) | The maximum price a consumer is willing to pay for a product or service |

# 1. INTRODUCTION

## 1.1. Political and legal context

Geographical indications (GIs) establish intellectual property rights for products whose qualities are specifically linked to the area of production. They identify goods as originating in a country, region or locality where a particular quality, reputation or other characteristic of the product is essentially attributable to its geographical origin.[1] These indications, supported by labelling and specific logos, help consumers identify authentic, original products of a particular quality.

At European Union (EU) level, special or *sui generis* GI protection has been established for wines, spirit drinks, aromatised wines, as well as agricultural products and foodstuffs. However, **there is currently no harmonized or unitary GI protection for** non-agricultural products, hereinafter referred to as **craft and industrial (CI) products,** at EU level.

There are numerous authentic CI products in the EU, for example Limoges porcelain, Solingen knives, Carrara marble, Yecla furniture, Bohemian crystal or Madeira embroidery. Such products are typically based on traditional know-how and production methods, rooted in the cultural and social heritage of a particular geographical location. More than 800 products have been identified to qualify as geographical indications for CI products in the EU[2].

Sixteen EU Member States have national *sui generis* GI schemes in place to cover CI products. These regimes differ in terms of protection, administration, fees, and do not offer producers protection beyond the national territory[3]. Other Member States have no GI protection scheme in place at national level for CI products and provide for the use of consumer protection laws or trade marks. When producers of CI products seek protection throughout the EU, they can only do so separately in each Member State as available at national level. This situation may disincentivise artisans and producers to invest in traditional crafts in the EU, in view of the increased costs and legal uncertainty around achievable protection. The absence of EU-level protection for CI products in not only an internal issue, though. In November 2019, the EU acceded to the **Geneva Act of the Lisbon Agreement** on Appellations of Origins and Geographical Indications[4], a treaty administered by the World Intellectual Property Organization (WIPO). The purpose of the Geneva Act is to develop the international framework for the registration and protection of geographical indications (Lisbon system). The Geneva Act offers a route to obtain protection of appellations of origins and geographical indications regardless of the nature of the goods to which they apply, including agricultural products, foodstuffs, wine and spirit drinks, handicrafts, industrial products and natural products. A particular shortcoming of the current EU legislation is that it only provides for GI protection for certain designated product markets, unlike most GI legislations around the globe.

[1] Article 22(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights.
[2] See Annex III of Insight Consulting, REDD & OriGIn (2013) Geographical indications protection for non-agricultural products in the internal market; Study for Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission).
[3] See Annex 8 for a detailed overview of sui generis GI national laws available for the protection of crafts and industrial products in the EU.
[4] Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications https://www.wipo.int/publications/en/details.jsp?id=3983

Consequently, **all products outside the range covered by agricultural GIs fall into a regulatory gap.** WIPO has been calling for the establishment of an EU-wide GI system concerning CI products.[5]

**The EU is obliged under international law to protect all GIs (not only agricultural GIs) to comply with the Geneva Act. Discretion exists only about *how (the legal vehicle)* to protect the remaining (non-agricultural) products.** The Geneva Act is, in theory, open to embrace various legal regimes. However, it is worth noting that all current members of the Lisbon System use a *sui generis* system. **While the EU is obliged to meet its international obligations under the Geneva Act and establish a protection scheme for CI products at EU level, there is still room for manoeuvre on how to do this in the most cost effective way.** Room for discretion exists as to detailed elements of a new EU scheme, such as the registration procedure, the authorities in charge, control and enforcement and so forth.

In addition to the context of the Lisbon System, **the EU has taken a leading role in promoting the *sui generis* GI regime in the international arena** including WIPO and the World Trade Organization. The EU position in these fora consequently advocates for the highest possible level of protection to be provided for all GI products. However, in its bilateral trade agreements with third countries, the EU can only offer GI protection to agricultural products, hence putting craft and industrial products from the EU and third countries in a weaker position.

In the **IP Action Plan** adopted on 25 November 2020, the European Commission announced that it would consider *the feasibility of a GI protection system for non-agricultural products at EU level*.[6] In a broader context, the IP Action Plan is part of the **Industrial Strategy**[7] and of the recovery strategy of the EU.

For several years, many **stakeholders** (producers, public authorities or governments, the European Parliament) have called on the European Commission to create a regulatory framework for the protection of geographically linked craft and industrial products. For example, at the hearing following the public consultation on the 2014 Green Paper[8] on a possible extension of geographical indication protection of the EU to non-agricultural products, a majority of participants made the case for enhanced and unitary GI protection for CI products in the EU.[9] More recently in 2021, an alliance named "Craft Europe" launched an initiative calling on the EU to ensure that its craft heritage is protected and easily identifiable internationally.[10]

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[5] See the WIPO presentation at the Max Planck Institute Workshop on Geographical Indications in Munich, 13-14 February 2020.

[6] Making the most of the EU's innovative potential An intellectual property action plan to support the EU's recovery and resilience, COM/2020/760 final. The 2020 IP Action Plan also foresees the possibility of broadening the European Anti-Fraud Office (OLAF)'s mandate to prevent counterfeit goods from entering the Single Market and act against illicit production of counterfeit goods within the EU.

[7] A New Industrial Strategy for Europe, COM(2020)102.

[8] GREEN PAPER Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products, COM/2014/0469.

[9] Results of the public consultation (15 July - 28 October 2014) and public conference (19 January 2015, Brussels), p. 36. https://ec.europa.eu/growth/content/public-consultation-possible-extension-geographical-indication-protection-eu-non_en, see also the position paper of the Confederation of Swedish Enterprise of 9 March 2020.

[10] Costalonga S. (2021, September). Provenance and heritage in the European Union: Why we should preserve products of origin. Guest Op-Ed. *World Trademark Review*.

In autumn 2015, the **European Parliament** endorsed an own initiative report on the possible extension of the EU acquis on geographical indication protection to non-agricultural products, and called on the Commission to make a legislative proposal.[11] The Parliament reiterated this call in response to the Single Market Strategy in May 2016[12], in the resolution establishing an EU Strategy for Sustainable Tourism, of 25 March 2021[13], and more recently, on 10 November 2021, in its report on the IP Action Plan. The same call was made by the **European Economic and Social Committee** on 18 February 2015[14], and also in the opinion adopted by the **European Committee of the Regions** on 12 February 2015[15], reiterated on 13 October 2021.[16]

On 10 November 2020, the **Council** communicated its readiness to consider the introduction of a system for *sui generis* protection of CI products, on the basis of a thorough impact assessment of its potential costs and benefits[17], and recalled this in its Conclusions of 25 June 2021[18]. On 15 June 2021, eight Member States[19] expressed their support to the creation of a protection system based on a *sui generis* intellectual property right at EU level, asking the European Commission to submit a legislative proposal in light of the time line set out in the IP Action Plan[20]. On 15 October 2021, nine Member States[21] sent a joint-non paper to the Commission, expressing their strong support for a forthcoming legislative proposal on EU-wide *sui generis* protection of geographical indications for non-agricultural products. There are also four Member States[22] that have expressed their reluctance to establish a new *sui generis* GI protection system at EU level[23]. The main reasons for this reluctance are, on the one hand, the fear that a new *sui generis* system would be too burdensome for public administrations and may increase the price of the product, and, on the other hand, the assumption that the existing trade mark system already provides sufficient protection.

This initiative is linked to the ongoing **reform of the system of geographical indications for agricultural products**[24]. Building on the results of the evaluation[25], the

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[11] Report of the European Parliament of 6 October 2015 on the possible extension of geographical indication protection of the European Union to non-agricultural products, 2015/2053(INI).
[12] Oral question to Commissioner Bienkowska during the presentation of the Single Market Strategy.
[13] European Parliament resolution of 25 March 2021 on establishing an EU strategy for sustainable tourism (2020/2038(INI)), para 64 f.
[14] https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/eu-geographical-indicationnon-agricultural-products
[15] CoR opinion ECOS-V-064 COR-2014-05386-00-00-AC-TRA on *Extending geographical indication protection to non-agricultural products available under*
[16] CoR opinion of 13 October 2021 on protecting industrial and craft geographical indications in the European Union
[17] Council conclusions on intellectual property policy and the revision of the industrial designs system in the Union of 10 November 2020.
[18] Council conclusions on intellectual property policy of 25 June 2021.
[19] Bulgaria, Czech Republic, France, Germany, Hungary, Italy, Poland and Slovakia.
[20] Statement 9381/21 ADD 1 of Bulgaria, Czech Republic, France, Germany, Hungary, Italy, Poland and Slovakia added to the Council conclusions on Intellectual Property of 15 June 2021.
[21] Bulgaria, Czech Republic, France, Hungary, Italy, Poland, Portugal, Slovakia and Germany.
[22] Denmark, Finland, the Netherlands and Sweden.
[23] Expert Group on IP Policy meeting of 22 April 2020
[24] See Proposal for a Regulation of the European Parliament and of the Council regulating the schemes for protection of geographical indications for agricultural products and foodstuffs, wine and spirit drinks, and of traditional specialities guaranteed for agricultural products and foodstuffs - Publications Office of the EU (europa.eu)
[25] AND International, ECORYS & COGEA (2020, December). Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU. https://op.europa.eu/s/sWcI

Commission is looking at ways to strengthen, modernise, streamline and better enforce GIs for agricultural products, foodstuffs, wines and spirits. This Impact Assessment is aimed at achieving the greatest possible synergies with that reform, to ensure that any new EU GI scheme for CI products would fit appropriately within the EU's GI regime and its protection at international level.

**Learnings from the evaluation report of the EU GIs protection schemes for agricultural products**[26] point to their positive effect on the internal market, boosting intra-EU trade, and ensuring a homogeneous level of protection, scrutiny and control procedures. EU agricultural GIs allow for fair competition for farmers and producers in the GI value chain, and a better income for the value-adding characteristics of their products. They also offer common standards facilitating trade with third country markets, who benefit from an efficient and objective examination procedure. The evaluation also points out that EU GIs schemes show coherence with Trade Mark protection, and are a strong asset of rural territories, promoting regional identity, growth and jobs. Finally, the GIview platform enhances transparency and improves the enforcement of Intellectual Property Rights. However, several areas can be improved in particular raising awareness and understanding of the schemes in some Member States, and improving the registration and amendment procedures.

Finally, in accordance with the Better Regulation Guidelines[27], impact assessments transposing an international agreement to EU law should focus on the margin of discretion available for the Commission. Consequently, this impact assessment focuses on alternative ways of meeting the EU's obligations stemming from the Geneva Act of the Lisbon Agreement.

### 1.2. Craft and industrial products in the EU

**The European Union (EU) is rich in authentic craft and industrial (CI) geographically rooted products,** i.e. products the quality or reputation of which is linked to its geographical origin, either by natural or human factors. **More than 800 of products with such characteristics were mapped in two studies conveyed in 2013 and 2020**.[28] These products typically stem from the following eight sectors as shown in: porcelain, ceramics and glassware, apparel, natural stones, lace, jewellery, textiles, furniture and cutlery.[29] However, the number of registrable products is likely to be significantly higher. Marie-Vivien states that France alone has at least 100 possible candidates for CI GI protection[30]. MABS International Marketing Services[31] identifies as much as 171 different CI GIs in the Spanish region of Andalusia.

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[26] Evaluation support study on geographical indications and traditional specialities guaranteed protected in the EU, December 2020, And International, Ecorys and Cogea.

[27] Better Regulation toolbox, tools 9 "When is an impact assessment necessary?" and 13 "How to undertake a proportional IA".

[28] Insight Consulting *et al.* (2013), supra note; VVA, ECORYS & ConPolicy (2020). Economic aspects of geographical indication protection at EU level for non-agricultural products. Study for Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission).

[29] Main product categories out of 322 products analysed under VVA et al (2020), supra note, page 18.

[30] See Delphine Marie-Vivien, Do Geographical Indications for Handicrafts Deserve a Special Regime? Insights from Worldwide Law and Practice in van Caenegem, W. & J. Cleary (eds), *The Importance of Place: Geographical Indications as a Tool for Local and Regional Development* (Springer 2017) 223.

[31] MABS International Marketing Services. (2019). Los Intangibles comerciales como motor de emprendimiento en Andalucía. A study commissioned by Andalucia Emprendre.

The 2020 study found that many of the 800 products identified in the 2013 mapping were simply not produced anymore. Other products had lost their geographical roots, for example because multinational companies preferred the use of trade marks without maintaining any actual presence in the region of origin, which may contribute to the decline of local craftsman skills. **Decline of skills** is well documented and reflects socio-economic and environmental challenges that globalization poses on traditional forms of craftsmanship.[32] Mass production (allowing for the supply of goods at low cost) and the change in consumers' taste moving away from traditional design have put competitive pressure on the traditional craftsman profession in the EU, leading to a strong decline of this sector in the second half of the 20th century. While cutlery or furniture producers were more resilient and adapted to changes brought by the industrial revolution, others including laces and embroidery strongly declined.

According to the Panorama Skills[33], in 2018, 1.2 million persons were employed as craft and printing workers representing less than 0.6% of total EU27 employment[34]. This number reflects a drop from 29 per cent between 2006 and 2018 resulting in employment falling from 1.7 to 1.2 million.[35] Over half of the workers have medium-level qualifications, and this share is expected to remain stable over the period up to 2030. The share of low qualified workers is expected to decrease from 29 to 25 per cent, whereas the share of highly qualified workers will grow from 14 to 21 per cent.[36]

**Women make a substantial part of employees in certain types of handicraft products.** These include: lace, embroidery, tapestry, glass, ceramics/pottery as well as wool products.[37] For example, nowadays there are around 700 mostly self-employed female lace makers in Koniaków (Poland);[38] or Elche shoes production employs over 9,000 full-time workers, 41-60% of which are women[39]. Furthermore, women also have a major role in preserving cultural heritage through craft[40]. By contrast, men are more represented in the technical crafts. For example, the Bourgogne Stone sector is composed of 100 quarries used by 40 enterprises, 39 industrial and extraction enterprises and 118 enterprises making stone cut and other activities. It represents around 700 full time jobs and only 20% of workers are women.

Today, a large majority (80%) of craft and industrial products are made by **micro and small-sized enterprises**.[41] Groups of mostly small or micro-sized producers (less than 50

[32] E.g. Study of the Austrian Commission for UNESCO commissioned by the Austrian Federal Chancellery and the Austrian Federal Ministry for Digital and Economic Affairs (Vienna, 2019).
[33] Skills Panorama (2020, January). Handicraft and printing workers: skills, opportunities and challenges (2019 update).
[34] According to Eurostat, in 2018Q4 a total of 193.7 million persons were employed in the EU.
[35] Insight Consulting et al. (2013), supra note, p. 133 GI craft and industrial products contributed to 1.6 million equivalent full-time jobs in the EU.
[36] Ibidem. The change in the qualifications profile of the occupation can be attributed to the growing complexity and diversity of both developing production techniques, new forms of employment and different business management techniques.
[37] Towards gender equality in the cultural and creative sectors Recommendations of the OMC (open method of coordination) working group of Member States' experts. (June, 2021) (ed) Amelie Menzel, European Experts' Network on Culture.
[38] https://centrumkoronkikoniakowskiej.pl/tradycja-sila-przetrwania/
[39] https://www.origin-gi.com/wp-content/uploads/2013/12/1.3.calzado_de_ElcheC_Rev.pdf
[40] 'Artisanal Collaborations and the Preservation of Intangible Cultural Heritage (richmond.edu) (Susan G. Goodwin The University of Richmond School of Continuing and Professional Studies Advisor: Dr. Andrew Schoeneman May 11, 2021).
[41] Insight Consulting *et al.* (2013), supra note, p. 129.

employees) are fairly typical for all product categories. Two exceptions are laces and embroideries, where clusters are composed by individual artisans. For some products (e.g. Royal Copenhagen porcelain), only one monopoly or dominant producer exists.[42]

**More sophisticated clusters are more likely to be export-oriented**.[43] The total turn-over for the 72 analysed products is estimated to amount to EUR 4.2 billion.[44] The recent 2020 Study confirms these observations. Across products, knife and cutlery products tend to be the most export oriented, reflecting the sophistication of clusters in this category. Furthermore, jewellery, precious stone products, luxury furniture and apparel are also export oriented with destinations such as the US and China. **Artisanal products are deeply integrated into the EU regions.** Results of the analysis presented in Annex 5 shows that at least 17% of NUTS3 regions in the EU (197 out of 1166) have a GI product. Some regions have more than one GI products, for example: Cerámica de Totana, Jarapa de Lorca, Cerámica de Lorca, Belén de Murcia and Mueble de Yecla originate from Spanish region Murcia (NUTS3 - ES620). Other products span across bordering regions: Sámi Duodji (Saami craft), Baltic Amber or Espadrilles Catalanes.

In 2018, **two thirds of these regions had GDP per capita** (purchasing power standard, EU27) **below EU average and two thirds are located outside urban areas.** Prior to the pandemic, in 2019, 75% of the regions have either GDP per capita or unemployment rate below the EU average; 30% are less developed regions i.e. regions with GDP per capita below 75% of the EU average; 45% have declining population measured as crude rate of total population change between 2010 and 2019. Finally, geographically rooted products are over-represented in regions with higher vulnerability in the tourism sector as compared to regions without geographically rooted products[45,46]. Such regions have been severely affected by the COVID-19 pandemic.[47]

## 2. PROBLEM DEFINITION

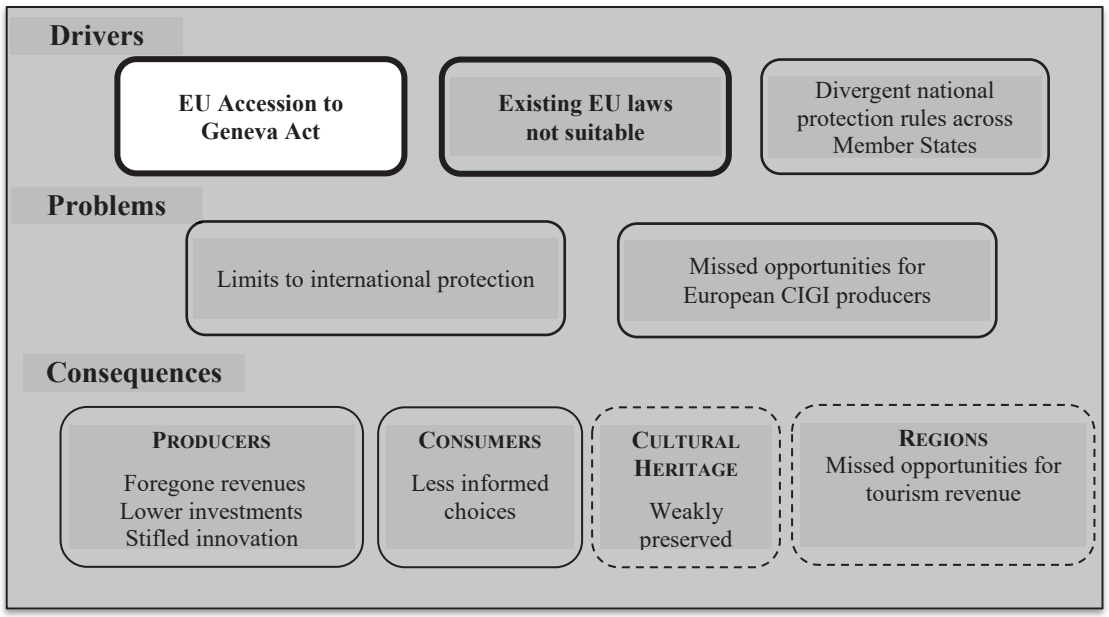
Today, CI products that have a specific quality or characteristics that are essentially due to the geographical environment in which they are produced cannot enjoy from an EU wide level certified protection. First, this means that the EU cannot secure geographical indication protection to EU producers in third countries by using the Lisbon/Geneva route or international trade agreements. The EU is also unable to protect GIs for CI products in the EU territory originating in third countries. Second, due to a complex landscape of available protection routes within the EU (EU trade mark, EU collective mark, national GI right where available, national collective mark, national certification mark where available), it is hard for producers to navigate towards obtaining and

[42] VVA *et al.* (2020), supra note, p. 68 and 69.
[43] VVA *et al.* (2020), supra note, p. 69.
[44] Ibidem, p. 139.
[45] The vulnerability index takes into account the following elements: tourism intensity (number of yearly nights-spent as a share of the number of residents), tourism seasonality (indicating the level of concentration of nights-spent in few months of the year) and share of foreign tourists. It has been developed in Batista E Silva, F., Kavalov B., Lavalle C. (2019, August). Territorial patterns of tourism intensity and seasonality in the EU. Publications Office of the European Union, Luxembourg, 2019, ISBN 978-92-76-09681-8, doi:10.2760/961265, JRC117669
[46] Own calculations using data from *Batista E Silva et al.* (2019) supra note. See Annex 5 for details
[47] Commission Staff Working Document - Annual Single Market Report 2021 - Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery COM(2021) 350 final.

enforcing protection in the EU. The variety and divergence of national initiatives results in legal uncertainty for producers seeking protection, may mislead consumers, weaken intra-Union trade, and make way for abuses of GI infringements offline and online.

Hence, discrepancies among various protection routes result in complicated and costly ways of securing protection that are unworkable for a typical cluster of small firms producing CI products. This prevents producers, their regions and consumers from fully grasping the benefits of an EU wide system of GI protection at EU level. These problems, their drivers and consequences are illustrated in Figure 1 and described in detail in this Section.

**Figure 1:** Problem Tree




## 2.1. What are the problems?

### 2.1.1 Limits to international protection for CI products

The two major multilateral tracks for GI protection in the international context are the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of the World Trade Organization (WTO), and the Lisbon system administered by the World Intellectual Property Organization (WIPO). The EU is member to the TRIPS Agreement (in force since 1 January 1995) and also to the Lisbon system under the Geneva Act (date of accession: 26 November 2019, entry into force on 26 February 2020). The Lisbon system currently has a membership of 37[48], including the

[48] Albania, Algeria, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Congo, Costa Rica, Cote d'Ivoire (not yet in force), Cuba, Czechia, Democratic People's Republic of Korea, Dominican Republic, European Union, France, Gabon, Georgia, Ghana, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Lao People's Democratic Republic, Mexico, Montenegro, Nicaragua, North Macedonia, Oman, Peru, Portugal, Republic of Moldova, Samoa, Serbia, Slovakia, Switzerland, Togo, Tunisia. WIPO has indicated that Mongolia, Georgia, Tunisia, Morocco, Algeria, Jamaica, Senegal, Zimbabwe, Mozambique, Moldova, Bhutan, the Gulf countries, Russia and China are interested to join the Lisbon System/Geneva Act.

European Union and seven EU Member States (Bulgaria, Czechia, France, Hungary, Italy, Portugal and Slovakia). To the best of our knowledge, all current members use a *sui generis* system.

While the TRIPS Agreement sets minimum substantive standards for protection of IPRs that all parties have to comply with, the Lisbon system creates a procedural regime of an international registration system where IPRs protected in one member state can be protected also in other member states through a central registration to WIPO. However, both the WTO TRIPS Agreement and the Lisbon system **apply to all kind of products** in providing protection for geographical indications.

As opposed to the EU legislation where names of craft and industrial products are not protected, **the Geneva Act** (like the Lisbon Agreement itself) **offers a route to obtain protection of appellations of origins/geographical indications regardless of the nature of the goods to which they apply**, including agricultural products, foodstuffs, wine and spirit drinks, crafts, industrial products and natural products. **The EU is obliged under international law to protect all GIs (not only agricultural GIs) to comply with the Geneva Act. Discretion exists only about *how (the legal vehicle)* to protect the remaining (non-agricultural) products.**

In this context, **the EU cannot secure protection in third countries for GIs for CI products originating in the EU by means of using the Lisbon/Geneva route**, as there can be no EU registration to start with. Moreover, the EU will have to refuse protection of GIs for CI products originating in third countries, as such protection is not available at EU level. To make the situation even more complex, the seven EU Member States were already party to the Lisbon Agreement before the EU's accession to the Geneva Act in 2019. Some of them actually protect their GIs relating to CI products in the Lisbon system[49] and offer at national level the same protection for other Lisbon members.

**Box 1:** The producers' perspective of the EU in the Lisbon system

Currently producers of CI products in the EU may or may not have access to protection through the international registration system depending on which EU Member State they are based in. Only seven EU Member States are party to the Lisbon system under the Lisbon Agreement. Producers in such Member States (for example French or Czech producers), after obtaining GI protection in their own country, can request the filing of an international application and possibly obtain protection in all other countries party to the Lisbon Agreement (for example, Mexico or Tunisia). However, producers in all other EU Member States (for example, German, Belgian, Spanish or Polish producers) do not have any opportunity to use the Lisbon system – not even if they can register a geographical indication in their home country. **Since the accession of the EU to the Geneva Act in 2019, it is not possible for EU Member States to join the international system on their own, due to the EU's exclusive competence**. Therefore, producers in Member States not already party to the Lisbon Agreement could only have a chance to benefit from access to the international system if they could obtain protection at EU level, and only on the basis of such registration would it become possible to seek protection in all countries party to the Geneva Act. The Geneva Act is the gateway to new parties joining the Lisbon System, which may expand significantly in the future.

[49] Examples are: Senovski Kaolin (BG), Bohemia Crystal (CZ), Émaux de Limoge (FR), Monoï de Tahiti (FR), Herend (HU), Halas, Kiskunhalas (HU), Slovenskŷ opál (SK).

Similarly, producers of CI products in non-EU countries have limited opportunities to use the international system in order to get protection in the EU. International applications filed under the Geneva Act could result in such protection only if the EU provided a GI title for CI products in the first place. As it does not, international applications for craft and industrial products have to be refused protection in the EU. It is only possible to get protection in EU Member States which were already party to the Lisbon system before the EU joined it, and which also protect CI GIs in their territories. Moreover, EU producers can only obtain GI protection under bilateral trade agreements with third-countries for agricultural products.

The lack of an EU protection system for GIs relating to CI products results in **the impossibility for CI producers from 20 Member States to benefit from the EU's accession to the Geneva Act by means of using an EU-level GI registration for the purposes of obtaining protection for their GIs in third countries which are parties to** the Geneva Act. It also triggers practical complications for the EU as to compliance with the obligations resulting from the Geneva Act. **CI GIs originating in third countries cannot be protected in the whole of the EU** using the Lisbon/Geneva route without such protection being available at EU level.[50]

On the bilateral level, the EU has already concluded and is currently negotiating a number of ambitious trade agreements that include comprehensive provisions on the protection of listed GIs. However, to date, the scope of such protection is limited to GIs of agricultural origin.[51] Hence, the **EU cannot grant protection of GIs for CI products via bilateral trade agreements**.

This results in missed opportunities for GI producers. Trade partners such as India, China or MERCOSUR attach great importance to protecting their GIs for CI products. However, the EU cannot include CI GIs in bilateral negotiations, as there is no unitary EU-level protection. For example, the Goiabeiras clay pots from Brazil could not be protected under the EU/MERCOSUR Agreement. Likewise, the EU can only protect its GIs for agricultural products in such bilateral agreements. This is despite the fact that some partners could offer GI protection in their territories also for EU CI products.[52] Furthermore, trade partners often ask for reciprocity when it comes to adding names to the initial GI lists protected under FTAs. Adding CI names could facilitate such reciprocity and greater protection for EU GI products in third countries against fraudulent practices affecting EU GI products.

[50] As to existing registrations protected by EU Member States already party to the Lisbon Agreement in their territories, Articles 12(3)-(4) provides for transitional protection of appellations of origin relating to non-agricultural products originating in third countries. EU Member States in question can keep protecting third country CI GIs in their territory, under their sole responsibility. However, this has no effect on intra-Union or international trade.

[51] The EU Trade Agreement with Colombia and Peru signed on 26 June 2012 exceptionally lists two non-agricultural GIs: Guacamayas Handicrafts (Colombian), and Chulucanas (Peruvian) Pottery. See: http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147725.pdf

[52] As shown in latest FTAs concluded by the EU, e.g. with Mercosur or Mexico, as well as in the EU-China GI Agreement, there are separate lists for CI GIs (not included in the annexes of protected GI names) and a provision in the Agreement referring to the future possibility of considering such names as potential candidates for protection in the event that the EU develops harmonised legislation on CI GIs. This illustrates that the EU is more and more confronted with requests from trade partners to recognise CI names in trade agreements.

Moreover, lack of GI protection at EU level for crafts an industrial products may also limit the EU development agenda policy to support CI GIs in developing countries. Today, the EU development agenda promotes quality policy in developing countries devoting significant EU budget on the development of GIs e.g. in Africa to add value to their agri-food production.[53]

More than 50% of the replies to the 2021 public consultation confirmed that lack of an EU protection scheme for CI products reduces EU producers opportunities to benefit from the EU's accession to the Geneva Act, as they cannot obtain protection in non-EU countries using the Lisbon system.[54] Furthermore, 44% of the replies also confirmed the limited benefits derived from bilateral trade agreements for EU CI producers.[55]

Annex 6 provides further insights into issues related to the international dimension.

2.1.2 Missed opportunities for European CI producers

Producers face a **complex landscape of available protection routes in the EU**. Possible means for IP protection for CI products can be divided into two big clusters: seeking protection at EU level, or seeking protection at national level.

**At EU level**, GI protection is currently not provided for CI products, therefore the only EU IP title available is governed by **EU trade mark law**. The European Union trade mark regulation (EUTMR)[56] distinguishes between three different kinds of EU marks: trade marks (or individual marks), collective marks and certification marks.

**EU collective marks** can in principle designate geographical origin, and their function is to indicate that a product or service comes from a certain group of companies (members of the association that owns the mark). Such features make them more suitable for producers of CI products than individual marks. However, the obligatory information that is required to be submitted in the regulation of use does not contain elements focused on geographically rooted product quality. Such product characteristics may or may not be specified and controlled by members of the association applying for protection. The IP office (EUIPO) would only assess the Regulation of Use against the legal requirements, which do not refer to any specific link between the goods and the geographical area/term contained within a sign.[57] Therefore, **there may be no guarantee either by a public authority or by producers that products** bearing the EU collective mark **comply with a given product specification or meet any criteria linked to their geographical origin**. Without certifying geographically linked product quality (specific product characteristics linked to geographical origin), collective marks do not allow for producers and regions to fully grasp all the benefits derived from a GI right. At the same time, consumers are only informed that the product originates from the owner association.

[53] From 2014 until 2020, the EU budget foresaw € 8.5 billion for food security, nutrition and sustainable agriculture in 62 partner countries, of which 36 countries in Sub-Saharan Africa, including to support Geographical indications, See SWD(2018) 301 final, 1.6.2018.
[54] Question 10, 2021 Public Consultation.
[55] Ibidem.
[56] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark – EUR-Lex - 32017R1001 - EN - EUR-Lex (europa.eu)
[57] Article 16 of Commission Implementing Regulation (EU) 2018/626 of 5 March 2018 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 of the European Parliament and of the Council on the European Union trade mark, and repealing Implementing Regulation (EU) 2017/1431.

**EU certification marks** were introduced by the EUTMR as from 1 October 2017 as a new kind of EU trade mark. Certification marks are used to indicate that goods or services comply with the certification requirements of a certifying institution or organisation. While a collective mark indicates that goods or services come from a collective or group, a certification mark acts as a sign of supervised quality. This feature would appear suitable for certifying geographically rooted product quality.

However, the **EUTMR explicitly excludes the possibility of certifying the geographical origin of goods or services**.[58] Such EU marks are thus currently not available for producers of CI products. Furthermore, a key limitation is that a certification mark cannot be owned by a person running a business involving the supply of the goods and services of the kind certified[59]. The **owner of a certification mark is precluded from using the mark for the certified goods or services covered**, to safeguard the neutrality of certification. This means that producers of CI products would not be able to apply for EU certifications marks and become owners of the resulting IP right even if it they were currently available for them.

**At national level**, 16 countries have ***sui generis* GI schemes** available for the protection of CI products (Belgium, Bulgaria, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Latvia, Poland, Portugal, Romania, Spain, Slovakia and Slovenia). Whereas trade marks are private rights, *sui generis* GIs are of a different nature, i.e. public rights. Their rationale is protecting the collective asset represented by a product reputation embedded in and derived from a localized cultural heritage.[60] The reputational benefits of GIs accrue to all producers in the region. The majority of these schemes are horizontal GI laws available for the protection of CI products[61]. There are also some specific legal instruments dedicated to recognising and protecting specific sectors (e.g. ceramics in Italy) or products (e.g. Solingen knives or Madeira embroidery). These laws differ in scope, definitions, procedures (application, opposition, and registration), competent authorities, fees, and types of control, and reflect a very fragmented approach to GIs that may negatively affect producers (and regions), particularly when seeking wider protection beyond national borders. Annex 8 provides an overview of *sui generis* GI schemes available for CI products at national level.

As to trade marks, **individual and collective marks** are available for producers in all Member States at national level, under rules harmonized by an EU directive.[62] Nine Member States have also opted to provide for national **certification marks** that can serve to designate geographical origin[63]. Limitations of trade mark protection also apply to these national IP titles. Moreover, protection by these national rights is limited to specific

[58] Article 83(1) EUTMR.
[59] Article 83(2) EUTMR.
[60] Addor (2002) Geographical indications beyond wines and spirits - —A Roadmap for a Better Protection for Geographical Indications in the WTO TRIPS Agreement, *The Journal of World Intellectual Property* Volume 5, Issue 6, p. 865.
[61] With the exception of provisions in the French IP Code explicitly focused on GI protection for industrial and artisanal products, these national *sui generis* laws are not specifically dedicated to GI protection of CIs but cover all kinds of GI products, or in some cases even services (e.g. massage).
[62] Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks - EUR-Lex - 32015L2436 - EN - EUR-Lex (europa.eu)
[63] As of January 2021, nine Member States have established national certification marks that can serve to designate geographical origin: Denmark, Ireland, Italy, Lithuania, Malta, Poland, Romania, Sweden and Spain.

national markets only. See Annex 7 for further insights into issues related to EU trade mark law and the differences between trade mark protection and *sui generis* GI protection.

**Box 2**: Different IP rights imply different scope

If producers wish to protect product names such as "Porcelain of Limoges" or "Ceramics of Gmunden" in their own country, there are two major routes to take. They can either file an application for a geographical indication, or file an application for trade mark protection. The first route is not available in eleven EU Member States. For example, "Porcelaine de Limoges" can be, and is, protected in France as a geographical indication, whereas "Gmundner Keramik" cannot be protected in the same way in Austria.

As to the trade mark route, which includes (individual) trade marks, collective marks and certification marks, there are some difficulties to overcome. In general, such marks cannot consist entirely of words that are not distinctive, in particular, if such words only describe the type of product or the geographical origin of the product. The producers therefore have to devise a so-called composite mark (or "logo"), using special script or adding figurative elements, so that the mark can pass the bar of distinctiveness. Even if that is achieved, the resulting scope of protection will not be the same for a GI and a trade mark, collective mark or certification mark.

For example, the holder of the "Gmundner Keramik" trade mark will not be able to stop the use of the name on the ground that a user does not keep to specific production methods resulting in particular product characteristics, unlike the holder of the "Porcelaine de Limoges" GI. A trade mark will not protect against the name becoming generic, or used in combination with words such as "type" or "kind". GI protection will be broader, as such protection is provided for by legal provisions tailor-made to suit this special kind of intellectual property, whereby the public authorities play a stronger monitoring role.

**CI producers in Europe rely on either a national *sui generis* GI scheme** (where available) **or trade mark protection.** Results of the 2020 Study[64] shows that among 332 products, 12 % (40) are protected by national *sui generis* GI rights and 153 are protected by a trade mark (individual or collective). Some producers also use national certification marks[65]. 27 products benefit from both *sui generis* GI and trade mark protection, illustrating that *sui generis* GI and trade mark protection are complementary. However, about half of the studied CI products (156) are neither protected by a registered trade mark nor by *sui generis* GI protection.

## 2.2. Consequences of the problems

In 2019 the European Parliamentary Research Service published a Cost of Non-Europe report[66] in which costs arising from the lack of EU legislation protecting GIs for CI products are quantified. Results of this report show that introducing EU-wide GI protection for CI products would have an overall positive effect on trade, employment

[64] VVA et al. (2020), supra note, p. 20.
[65] Sami Duodji, made in Toruń or Albacete cutlery. VVA & AND International (2021), supra note, p. 43.
[66] European Parliament (2019). Geographical indications for non-agricultural products. Cost of non-Europe report. Study by European Parliamentary Research Service (EPRS).

and rural development. More precisely, after approximately 20 years of implementation, such a protection scheme would yield an overall expected increase in intra-EU trade, in the relevant sectors, in a range between 4.9 and 6.6 % of current exports (between EUR 37.6 to 50 billion). Expectations are that regional-level employment would rise by between 0.12 and 0.14% and that between 284,000 and 338,000 new jobs would be created in the EU as a whole. These benefits should be benchmarked against half a million jobs lost in the craft sector during the last two decades.[67]

Consequences by stakeholder groups are presented as follows:

Producers

**Foregone revenues:** The Special Eurobarometer Survey 504[68] shows that around 80% of Europeans agree that factors such as the respect of local traditions and know-how, quality labels or the geographical origin of a product play an important role in buying food products. Furthermore, a recent FAO & EBRD Report[69] shows that consumers value quality that comes with the territorial link and are willing to pay price premiums between 20 and 50 percent on average. A recent literature review confirms that willingness-to-pay (WTP) for products certified by PDO and PGI labels is higher than for products that are not certified.[70] PGI schemes allow for farmers and producers producing beverages and foodstuff to get a price premium and better income for the value-adding characteristics of their products. A recent evaluation study of PGI and PDO schemes in Europe shows that 64% of GIs products increased in sales value between 2010 and 2017, 46% in volume.[71]

The behavioural experiment from 2020 studied how consumers perceive *sui generis* GI-protected CI products in comparison to other authentic and non-authentic products (see Annex 4 for details). The results show that WTP for an 'authentic' product increases with its value.[72] Evidence at the product level shows that the use of the name Solingen raises the willingness to pay (WTP) by about 30%, while producers of Perpignan Garnet Jewellery mentioned that demand has increased by 20-30% since the recognition under the French GI regime.[73] Sales could even double based on Agri-GI example.[74]

Problems identified in Section 2.1 limit the possibility of producers to signal the geographically linked quality of their products in a systematic way across the EU, resulting in limited abilities of CI producers to raise their profit margin and sales potential. Evidence gathered in a mystery shopping[75] shows that in addition to brands, producers use further marketing techniques to signal the characteristics of their products. These include direct sales at producers' own stores (e.g. Liffol chair) and in case of distribution

[67] Skills Panorama (2020), supra note.
[68] Special Eurobarometer 504 Survey (2020, October) *Europeans, Agriculture and the CAP* available at https://europa.eu/eurobarometer/surveys/detail/2229
[69] FAO & EBRD (2018). Strengthening sustainable food systems through geographical indications: An analysis of economic impacts. Rome.
[70] Cei et al. (2018). From Geographical Indications to Rural Development: A Review of the Economic Effects of European Union Policy. *Sustainability*, 10, 3745.
[71] AND International et al. (2020), supra note, see Executive Summary.
[72] VVA *et al.* (2020), supra note, Section 5.
[73] VVA *et al.* (2020), supra note, p. 82.
[74] In the agricultural sector, 'The sales value of GI products was on average (weighted) 2.07 times higher than the sales value for comparable standard products without a GI label. ' AND-International & Ecorys (October, 2019) Economic value of EU quality schemes, geographical indications (GIs) and traditional specialities guaranteed (TSGs) Final Report p. 102.
[75] Ibidem.

via third party, the retailer's special presentation and display arrangement. Furthermore, products are often accompanied by a certificate of origin or have "Made in" labels embedded on them (e.g. Solingen or Royal Copenhagen porcelain). The same study[76] shows that producers see the benefits of GI protection in name recognition and branding.

When producers are unable to send a clear signal, they are less incentivised to invest in geographically linked products, to cooperate in order to specify product qualities and to create niche markets. According to the Panorama Skills[77], employment in craft occupation is falling. At the same time, introduction of *sui generis* GI protection in France in 2014 led to increasing attractiveness of handicraft jobs[78] and increasing employment.[79] While current fragmentation of quality certification schemes at EU level and limited access to international protection cannot explain the declining trend in crafts, they can be considered as factors hindering commercial development of the craft sector in the EU.[80]

Finally, changing consumer preferences and technological progress create a considerable economic potential for CI producers. While many craft trades are centred on human input, emerging technologies are increasingly being used to facilitate the design and production processes.[81]

**Free-riding and lost revenues**: In consequence of the lack of EU-wide protection of CI GIs, certain producers including producers from third countries try to pass their products off as authentic, e.g. by imitation or by way of evocation of the protected name ("free-rider problem").[82]

IP fragmentation is challenging not only for protection but also for enforcement. Better enforcement as well as combatting misuse of a protected name and fraud is identified by 89% of the respondents of the 2021 public consultation as an incentive in favour of a new EU protection scheme for GIs.[83] Already the 2013 Study on geographical indications revealed that producers and their associations are concerned by the number of counterfeit products abusing their name, or by IP infringements. Accordingly, a majority of producers (60%) reported a small loss of revenues due to infringements (below 5% of the turnover), about 21% of the producers a loss between 5 and 30% and 12% of producers a loss between 30% and 50%.[84] In addition, more recently, online counterfeiting becomes

[76] Ibidem, Section 4.4.
[77] Skills Panorama (2020), supra note.
[78] According to presentation of Association Française des Indications Géographiques Industrielles et Artisanales in 2019 at the Workshop on *Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU*, in France, the introduction of a GI system promoted local industries and had resulted in young people returning to rural areas.
[79] According to presentation of INPI at the 2019 Workshop on *Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU* after the GI registration of Porcelaine de Limoges, more ceramic painters moved back to Limoges.
[80] For example, Muiris Kennedy, Marketing and Business Development Consultant, notes that the lack of intellectual property protection on the EU and international level harms the traditional craft sectors (Workshop on economic aspects of geographical indication protection at EU level for non-agricultural products in the EU, Brussels, 18 November 2019).
[81] Examples include computer-aided design software, metal cutting devices or digital fabrication.
[82] EUIPO (2016) Infringement protected GIs for wine, spirits, agricultural products and foodstuffs in the EU, pp. 14, 15.
[83] Question 12 of the 2021 public consultation aimed at characterising incentives to participate in an EU scheme for the protection of geographical indications for non-agricultural products.
[84] Insight Consulting *et al.* (2013), supra note, p. 103.

of concern to the craft sector.[85] In 2015, the European Economic and Social Committee (EESC) reported that producers of CI products – Bohemian Crystal, Marmo di Carrara, Paška čipka (Pag lace) and others[86] – face a constant challenge to protect themselves by launching campaigns, registering trade marks and taking legal action[87]. In their replies to the Public Consultation, producers of geographically rooted products underlined that regulatory fragmentation makes the protection and the enforcement of their rights difficult and costly within the internal market.

Producers have to take various approaches to protect their rights across the EU, such as taking action on the basis of preventive trade mark registrations (examples include Donegal Tweed from Ireland and Solingen knives from Germany).[88] Producers point out that a harmonised EU GI protection scheme for CI products could help defend themselves against imitation and abuse, and it would be less costly to take action.[89] Some evidence shows that the adoption of *sui generis* protection at national level has improved the legal basis for enforcement.[90] Finally, according to the respondents to the Inception Impact Assessment (IIA) consultation[91], EU wide GI protection could help enforcing rights not only within the EU, but also at international level, in particular against bad faith trade mark registrations in third countries.[92]

Ultimately, for producers of authentic products, free-riding means loss of market opportunities with fewer revenues to re-invest in production and commercialisation.

Consumers

Consumers attach value to the products which quality stems from the territorial link (the origin). Limited scope of the EU trademark protection and/or lack of harmonized GI protection for CI products, therefore, **may increase consumers search cost**. Mystery shopping conveyed in the context of the 2020 Study[93] found that product information on CI products is often unclear or, in some cases, even ambiguous. While some shops

[85] Examples: The Asociación de Cuchillería y Afines (Association of cutlery producers located in Albacete and neighbouring areas, Spain), indicates that importers of low quality (essentially Chinese) products are marketing/repackaging those products as if they had been produced in Albacete (although the blade is not engraved, the product is repackaged or simply advertised/marketed as produced in Albacete), Meeting Report of 30 September 2015.

[86] Schwarzwälder Kuckucksuhr, Ceramica Artistica e tradizionale di Vietri sul Mare, Brački kamen (Brač stone and sculpture), Deruta ceramics and Murano.

[87] Opinion of the European Economic and Social Committee on the Green Paper - Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products COM(2014) 469 final, 18 February 2015 available at: EU geographical indication/non-agricultural products | European Economic and Social Committee (europa.eu)

[88] See the contributions of the Bergische Chamber of Commerce responsible for monitoring and enforcement of Solingen cutlery to the Roadmap consultation, January 2021; and Insight Consulting *et al.* (2013), supra note, pp. 109-111.

[89] See the contribution of SME United to the Inception Assessment consultation, January 2021.

[90] See the contributions of Porcelaine de Limoges and Pierre de Bourgogne to the 2020 IIA consultation on the Intellectual Property Action Plan. For details, see the case study on Pierre de Bourgogne, annex 1 of the 2021 Study on control and enforcement: Among 100 infringements identified, in 90% of cases the issue was solved through the submission of registered letters by the producers' group; about 10 situations were solved through the formal notice from a lawyer and only one infringement has led to a court case.

[91] See Annex 2.

[92] See the contribution of the Bergische Chamber of Commerce and of the Confederazione Nazionale dell'Artigianato e della Piccola e Media Impresa to the IIA consultation, January 2021, see also the contribution of IP association MARQUES.

[93] VVA *et al.* (2020), supra note, Section 5.

provided clarity on the geographical origin and production techniques of products, with additional information such as brochures or certificates, in other shops information on authenticity and quality was lacking or incomplete. Where mystery shoppers reported information to be incomplete, they also reported higher search costs (time spent identifying relevant products in the shops).[94]

Many producers see visibility as a key benefit of GIs protection.[95] Generally, it is considered that consumers benefit from a higher level of GI protection, because it gives valuable information about product characteristics.[96] The vast majority (80%) of respondents to the 2021 public consultation see the value of GI protection, reflected in an EU logo, as a useful marketing tool and a way to facilitate better visibility of their products vis-à-vis consumers.

Missed opportunities for tourism revenue – regional development

*Sui generis* GI schemes are regarded as important endogenous rural development mechanisms by the European Union. GIs have proven successful for producers of agricultural products and foodstuffs, wine and spirits, delivering higher added value, more jobs and safeguarding a product's identity and heritage through the notion of terroir.[97] Furthermore, it has been shown that GI value chains have a strong relationship with tourism and on-farm processing, contributing to regional diversification of income.[98] No such mechanism is available for CI products at the EU level today. This constrains the choice of strategies to promote sustainable development in regions that are today characterised with GDP per capita below or employment rate below the EU average (see Annex 5 for a description of the characteristics of regions with CI GIs).

The European Travel Commission (ATC) Handbook[99] documents that consumers **seek authenticity** (i.e. valuing individual, authentic experiences over 'products') as well as **develop responsible and ethical purchasing habits** (i.e. looking to favour 'local heroes'; SMEs that are integral to local economies). Consumers also show increasing interest to embrace **sustainable tourism practices**. CI products, therefore, have a potential to boost tourism attractiveness.

Cremona (IT),[100] Limoges (FR),[101] Carrara (IT)[102] or Fiskars village (FI)[103] are examples of villages that have started to build sustainable tourism around CI products. Furthermore, initiatives like the 'European route of ceramics' give visitors a chance to discover

[94] For details on design and sampling of mystery shopping see Annex 4.
[95] VVA *et al.* (2020), supra note, p. 78.
[96] Menapace and Moschini (2012). Quality certification by geographical indications, trademarks and firm reputation. *European Review of Agricultural Economics*, 39(4), 539-566; Insight Consulting *et al.* (2013), supra note (pp. 206 – 207) also explains that the majority of producers and non-producers took the view that consumers will be better informed on the specific features or characteristics of the product if a new EU wide protection scheme for GIs would be created.
[97] Cei et al. (2018), supra note; AND International *et al.* (2020), supra note; Dumangane M., Granato S., Lapatinas A. & Mazzarella G. (April, 2021). Causal estimates of Geographical Indications' effects on territorial development: feasibility and application, JRC Technical Report.
[98] AND International *et al.* (2020), supra note.
[99] European Travel Commission (September, 2021) Encouraging Sustainable Tourism Practices, A report produced for the European Travel Commission by TOPOSOPHY Ltd.
[100] https://www.in-lombardia.it/en/tourism-in-lombardy/tourism-cremona
[101] https://www.limoges-tourisme.com/en/What-to-see/Skills-and-excellence/Porcelain
[102] https://www.carraramarbletour.it/en/tours/
[103] https://www.fiskarsvillage.fi/en/tapahtumat-ja-aktiviteetit/

what goes on behind the scenes of ceramics production around cities like Limoges (FR), Delft (NL), Faenza (IT), Selb or Höhr-Grenzhausen (DE).[104] Other Cultural Routes of the Council of Europe Programme also promote awareness and understanding of the European cultural identity. That Programme has a growing number of network members each year[105]. Similarly, Rauma Lace (FI) is an important image and tourism product for the city during the Lace Week and beyond[106].

CI GI products are found in regions characterised by higher vulnerability to the tourism sector. Those regions could benefit by pursuing sustainable development strategies building on their GI assets. On the one hand, sustainable tourism developed around a CI GI asset may reduce the problem of tourism seasonality, as craftsmanship offers have a potential to attract tourism all over the year (see examples above); on the other hand, promotion of industrial CI GI clusters (e.g. Elche shoes) can contribute to the economic diversification of regions highly dependent on tourism.

Finally, the Annual Single Market Report[107] of 2021 shows that "tourism" was the hardest hit ecosystem during COVID-19. In the first three quarters of 2020, it lost one fourth of its turnover. Consequently, CI producers and their regions were also severely affected[108]. Helping these regions attract work force and promoting sustainable tourism initiatives are of special importance for the recovery of these regions in the aftermath of the pandemic.[109]

Impediment to the preservation of cultural heritage

Geographically linked products are often made based on local know-how and following local production methods that are rooted in the cultural and social heritage of their home region.[110] As shown in Section 1.2, craft is declining, partly due to the high cost of labour in Europe as compared to other regions such Asia, as well as due to increased automation of tasks (mass production).

Currently, intangible cultural heritage is preserved by clusters of individual artisans and producers that have a strong motivation to keep traditions alive.[111] Efficient IP protection has potential to contributing to the increased profitability and attractiveness of the traditional craft professions (as explained above). Specific GI protection is acknowledged as preserving and developing cultural heritage both in the agricultural and the craft and industrial areas.[112] The protection of tradition and cultural heritage was identified as a

[104] https://www.coe.int/en/web/cultural-routes/the-european-route-of-ceramics
[105] https://www.coe.int/en/web/cultural-routes/-/300-new-network-members-join-the-cultural-routes-of-the-council-of-europe-during-2020-2021
[106] Annexes to VVA *et al.* (2020), supra note; Photo gallery of the Rauma Lace Week
[107] COM(2021)350 final.
[108] See Annex 5
[109] See e.g. 'The economic impact assessment of the Design and Crafts Sector of Ireland' report authored by Grant Thornton, August 2021
[110] For example, the UNESCO Lists of Intangible Cultural Heritage was used as a source to shortlist products for the VVA *et al.* (2020) Study.
[111] For example, the lace produced in the area of Gorizia has to be understood as regional cultural heritage. Due to its being a niche product, there is no such thing as "the lace industry". The Laces Foundation in Gorizia, besides holding lace-making courses, is the main producer of traditional laces in the area (students and teachers can sell their final products through the official laces retailer in town). VVA *et al.* (2020), supra note, see p.92 in the Annex.
[112] '*Culinary traditions making part of the EU gastronomic and cultural heritage, GIs and Traditional Speciality Guarantee (TSGs) help keeping alive traditional production techniques and through their reputation ensure a diversity of authentic foods for new generations.*' in Commission Staff working

key incentive to create an EU scheme for the protection of CI products in 80 % of replies to the 2021 public consultation[113].

### 2.3. What are the problem drivers?

As presented in the previous section (2.1), there are three problem drivers:

- EU accession to the Geneva Act
- Divergent national IP protection rules across Member States
- Existing EU laws not suitable

### 2.4. How will the problem evolve?

The problem would most likely worsen if the EU does not take action. First, building on the trend identified in the 2020 Study[114], whereby many CI GI products have disappeared from the list identified in the 2013 Study, many producers may be discouraged from continuing to produce CI products, thus negatively affecting regions and their possible recovery, the attractiveness of crafts, and limiting the preservation of cultural heritage. In addition, with the current fragmentation at national level and the lack of an EU scheme and registration for CI products, producers will continue to have difficulties to protect their GI at EU level and globally, facing unnecessary administrative burdens and costs, as well as less effective enforcement remedies. Second, at the international level, and in view of the increasing number of third countries introducing GI protection for their products[115], the protection of GI becomes more important, making the need for an EU-wide regime even more urgent. Growing frustration of parties to the Geneva Act with refused protection of their non-agricultural GIs in the EU, as well as of EU producers experiencing limited opportunities to seek protection through the Lisbon system, can be foreseen. With the expectation of the geographical expansion of the Lisbon system due to new accessions to the Geneva Act, such concerns may become more pronounced. Switzerland deposited its instrument of accession on 31 August 2021 and its accession will be in force as of 1 December 2021. Ghana deposited its instrument of accession on 3 November 2021 and its accession will be in force as of 3 February 2022. WIPO has indicated that Mongolia, Georgia, Tunisia, Morocco, Algeria, Jamaica, Senegal, Zimbabwe, Mozambique, Moldova, Bhutan, the Gulf countries, Russia and China are also interested in joining the Lisbon System/Geneva Act.

In addition, GIs remain an essential interest in international trade negotiations which may get blocked should no solution be found. For example, under the trade agreement with China, 100 GIs from both sides are protected, and the agreement is to cover additional 175 GIs from both sides in the four years following the entry into force of the agreement. China protects CI GIs domestically and attributes great importance to such GIs.[116] With more such pending bilateral negotiations, the untapped potential for the protection of CI

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document evaluation of geographical indications and traditional specialities guaranteed protected in the EU p. 38.

[113] Question 12, 2021 public consultation.

[114] VVA et al. (2020), supra note.

[115] This can be illustrated by e.g. a simple search in WIPO Lex, WIPO's global database of IP laws, in respect of the subject matter 'geographical indications' among legal information on intellectual property from around the world in WIPO Lex displayed 251 records from 01/01/1975 to 01/01/1995 and 942 records from 01/01/1995 to 01/11/2021.

[116] Agreement between the European Union and the Government of the People's Republic of China on Cooperation on, and Protection of, Geographical Indications, signed on 14 September 2020.

products is expected to grow. For example, on May 2021 the EU and India agreed to resume FTA negotiations. As of today, India has 361 registered[117] and 222 pending applications[118] under the Geographical Indications of Goods Act, 1999. Among them 57.9% belongs to the category "handicrafts".[119]

## 3. WHY SHOULD THE EU ACT?

### 3.1. Legal basis

An EU intervention could be based on Article 118(1) [120] and/or on Article 207(2)[121]of the Treaty on the Functioning of the EU (TFEU). A new EU-wide GI protection system for CI products would notably achieve the objective of the internal market with regard to the protection of certain product qualities linked to a specific geographical region. In addition, it would establish the link between an EU wide protection scheme as well as the Lisbon system.

### 3.2. Subsidiarity: Necessity of EU action

EU Action is necessary to fulfil EU's obligations stemming from accession to the Geneva Act of the Lisbon Agreement. The Geneva Act falls under exclusive competence of the Union under the common commercial policy.[122] EU action can help maximize profits not only from the EU's accession to the Lisbon system for producers in the EU but also from the potential in the EU's bilateral trade agreements.

Moreover, EU action can create a functioning internal market for CI geographically linked products, by establishing an efficient and harmonized regulatory framework for their protection. In this regard, this initiative forms part of an area of shared competence between the EU and the Member States and concerns the internal market.[123]

The problem of regulatory fragmentation cannot be solved by the Member States alone. Various GI protection systems for CI products have developed at national level. These frameworks are not mutually recognised, hence producers face legal uncertainty and costly and complex administrative burdens to protect and enforce their GI product across the internal market.

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[117] https://ipindia.gov.in/writereaddata/Portal/Images/pdf/GI_Application_Register_10-09-2019.pdf
[118] https://search.ipindia.gov.in/GIRPublic/
[119] https://spicyip.com/2020/03/should-india-join-the-geneva-act-of-the-lisbon-agreement-2015.html
[120] "In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements."
[121] "The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy."
[122] The European Court of Justice clarified on 25 October 2017 in case C-389/15 - Commission vs. Council that the draft revised Lisbon Agreement, i.e. the Geneva Act, is essentially intended to facilitate and govern trade between the European Union and third States and, secondly, that it is such as to have direct and immediate effects on such trade, so that its negotiation fell within the exclusive competence which Article 3(1) TFEU confers on the European Union in the field of the common commercial policy envisaged in Article 207(1) TFEU.
[123] According to Article 4(2)(a) TFUE, shared competence between the Union and the Member States applies notably in the area of the internal market.

### 3.3. Subsidiarity: Added value of EU action

An EU-wide approach for GI protection would enable the EU to fully benefit from the opportunities offered by the international system of appellations of origin and GIs (Lisbon system). National protection systems alone cannot achieve this objective, as only those Member States which are parties to the Lisbon Agreement may maintain application and submit new ones in this limited framework. It would also allow EU producers to benefit from the additional protection granted by EU international trade agreements in third countries, which Member States alone cannot offer.

The problem of regulatory fragmentation would be effectively solved at EU level. An EU initiative could provide for equal protection conditions in all Member States, thus creating legal certainty and incentives for investment in geographically rooted CI products. In comparison, the variety and divergence of national initiatives results in legal uncertainty for producers seeking protection, mislead consumers, impede intra-Union trade, and make way for unequal competition in marketing GI protected products.

## 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

### 4.1. General objectives

The proposed initiative aims to address the following two general objectives:

- **O 1**: Fulfill the EU's obligations under the Geneva Act of the Lisbon Agreement, maximize profits from the EU's accession to the Lisbon system for producers in the EU and from bilateral trade agreements.
- **O 2**: Create a functioning internal market for CI geographically-linked products, by establishing an adequate and harmonized regulatory framework for their protection.

### 4.2. Specific objectives

The specific objectives are set to evaluate which system at EU level would be more effective and efficient in order to allow the EU to provide GI protection under the Geneva Act for CIs products. The Geneva Act allows Contracting Parties to use any type of legislation[124] to protect products registered under the Lisbon System, provided that the legislation in question meets the requirements of the Geneva Act[125]. As party to the Geneva Act, the EU must provide legal means to prevent the use of an internationally registered GI, from any use amounting to the imitation of an appellation of origin or GI.

Such protection system has to guarantee registration and enforcement at EU level of CI products that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place. For further details on the Geneva Act see Annex 6.

In addition, such protection system hast to be adapted to producers group composed of small and micro enterprises and self-employed craftsman. Therefore the system should

[124] Members may use special laws that apply specifically or exclusively to geographical indications and/or appellations of origin, trademark laws, administrative provisions, or other legal means (See: Main Provisions and Benefits of the Geneva Act of the Lisbon Agreement (2015) (wipo.int)

[125] According to the Geneva Act, the scope of protection of GIs extends to protection against evocation and GIs cannot become generic.

be applicant friendly and affordable at the registration stage. Furthermore, as shown in the problem section, affordable and effective enforcement of controls is expected by stakeholders to assure that consumers seeking assurance about the quality, authenticity and traceability of products, are not misled. Finally, due to concerns of some Member States, the system should not pose significant burden for national authorities. Consequently our specific objectives are:

- **SO 1**: Applicant friendly and affordable registration system
- **SO 2**: Effective and affordable system of control and enforcement
- **SO 3**: Low cost for public authorities

## 5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

### 5.1. What is the baseline from which options are assessed?

The baseline scenario is to keep the current fragmented regulatory framework in the EU and sustain the lack of recognised protection at international level.

If the EU does not take action, many producers may be discouraged from continuing to produce such products, thus negatively affecting the attractiveness of crafts and regions and their possible recovery, and limiting the protection of cultural heritage. In addition, with the current fragmentation at national level and the lack of an EU scheme and registration for CI products, producers will continue to have difficulties to protect their GIs at EU level and globally, facing unnecessary administrative burdens and costs, as well as less effective enforcement remedies.

The EU will continue to be obliged to reject applications for CI GIs coming from third countries and will be unable to protect EU CI GIs in bilateral trade agreements, putting agricultural products covered by a GI in a more favourable position.

### 5.2. Description of the policy options

The main policy options (PO) identified:

- PO 0 - Doing nothing
- PO 1 - Extending the existing GI system for agricultural products, wines and spirits to CI products
- PO 2 - A self-standing EU Regulation creating a unitary exclusive protection system for CI products based on a *sui generis* IP right at EU level

  PO 3 - A reform of the trade mark system allowing for guaranteeing a specific product quality linked to a specific geographical region, on the basis of certification or collective trade marks

5.2.1. Option 0 - Doing nothing

This option maintains the status quo.

5.2.2. Option 1 - Extending the existing PGI/PDO schemes to CI products (PO1)

Under this option, a GI protection system for CI products would be integrated in the existing GI protection schemes that cover agricultural products and foodstuffs[126], wines[127], spirits[128] and aromatised wines[129] (hereafter "PGI schemes"). This current scope of the *sui generis* GI regime foresees that the link to the territory is characterised by both geographical as well as historical and reputational factors[130].

**Box 3**: Link between the product and the region

- for PDOs, the quality or characteristics of the product are **essentially or exclusively linked** to the particular geographical environment of the place of origin. This geographical environment encompasses natural and human factors, such as climate, soil conditions, topography, local know-how, etc. (natural and human factors); and **all production stages must take place in the defined geographical area**;


- for PGIs and GIs, the quality, reputation or other characteristic **is essentially attributable** to its geographical origin. For most products, **at least one of the production steps takes place in the defined geographical area**;


*Source:* AND International et al. (2021), p. 7.

The PGI schemes already implemented at EU level include differentiated levels of the link to the territory for Protected Designations of Origin (PDOs) and Protected Geographical Indications (PGIs) in the agri-food and wine sectors, and Geographical Indications (GIs) in the spirit drinks and aromatised wine products sectors. As explained in Box 3, the link with the territory is stronger for PDOs than for PGIs. Under this option, we consider the use of the existing logos also for CI GI products.

Administration and registration: There is a two-stage registration procedure whereby an application is submitted first at the level of Member States and then transferred to the European Commission. Under the proposed revision, Member States would continue with a preliminary procedure at the national level that includes scrutiny, publication and the opposition procedures in which objectors from the same Member State can oppose to an application by a producer. At the EU level, the revision of the GI system would give powers to the Commission to outsource the scrutiny of applications and oppositions to an

[126] Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs.
[127] Regulation (EU) No 1308/2013 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.
[128] Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008.
[129] Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91.
[130] From the 19th century onwards the basis for authenticating territorial link has shifted from prioritising geographical factors (the influence of soil, climate) to increasingly recognising historical and reputational ones (production techniques, breeding choices or historical regions of production and distribution). This transition sets the stage for EU GI law recognising crafts and textiles. Zappalaglio, A. (2021). *The Transformation of EU Geographical Indications Law: The Present, Past and Future of the Origin Link*. Routledge.

agency (most likely EUIPO). The agency would be involved up to finalising the assessment of the application, including the opposition procedure if launched, but the decision of the registration would be kept with the Commission[131].

Registration of GIs may be subject to a fee at the national level (for the application, registration, amendment and cancellation). The protection offered by the GI is unlimited in time provided the GI producer continues to meet the product specifications and complies with the EU regulations. At international level, the Commission is the Competent Authority to deal with GI registrations under the Geneva Act.

Control and enforcement:

A system of control and enforcement includes verification (aimed at ensuring compliance with the product specification before the product is placed on the market); monitoring such compliance after the product has been placed on the market; and enforcement, which is related to action against infringement of the GI right[132].

- **Third party conformity assessment**: The current control system is based on the specific rules defined in each of the four sector-specific Regulations[133] and the Official Control Regulation (OCR)[134]. In this system Member States are responsible for:
    - The **verification, control** and **monitoring** of all GI products produced and marketed in their territory (independent of the territory of production). Member States define their control and monitoring strategies according to risks analysis of the products. They check the compliance of the products with the corresponding product specification.
    - To do so, Member States designate **central authorities** responsible for the organization of official controls which can be **delegated** to third parties (control bodies), be it a legal person (conformity assessment bodies/ certification bodies) or a natural person (experts).
    - **Control bodies** (i.e. certification bodies) have to be accredited in accordance with EN ISO/ IEC 17020[135] by a national accreditation body[136]. The

[131] Impact assessment accompanying the Regulation (COM(2022) 134 final) on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products. Under the preferred Option 2, sub-option 1 assessment and publication for opposition by an agency; decision on registration or rejection with the Commission; and under Option 2, sub-option 2 assessment and decision on registration or rejection by an agency; open right of appeal to the Commission; and management of eRegister with an agency.

[132] IP enforcement rules are defined in the Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

[133] Sectoral GI legislations guiled by four Regulations (see footnotes 117-120) are outlining the rules for controls on the verification of compliance with the product specification (PS), before placing the product on the market; checking the proper use of the names registered on the market (agri-food products and spirit drinks); prevent or stop the unlawful use of PDOs and PGIs on products marketed in their territories (wines and spirit drinks) within the Union. (See Commission Staff Working document evaluation of geographical indications and traditional specialities guaranteed protected in the EU p. 22).

[134] Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

[135] 'Requirements for the operation of various types of bodies performing inspection'.

[136] See in this regard Regulation 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products.

costs of accreditation are absorbed by the certification bodies. Costs derived from the controls carried out by delegated bodies (certification bodies) are usually paid by the producer, who may be reimbursed by the Member State through the EU rural development fund[137].

**Planning, Reporting and Auditing obligations**: Member States have to comply with certain planning and reporting obligations to the Commission. They are obliged to conduct their official controls on the basis of **a multi-annual national control plan** (MANCP) containing e.g. general information on the structure and organization of the control systems[138]. In addition, Member States shall submit to the Commission an **annual report** setting out among others the outcome of official controls performed under their respective MANCP including types and numbers of non-compliances. In this regard, Member State shall carry out checks based on a risk analysis and apply appropriate administrative **penalties** in case of breach, and take all necessary measures. The European Commission in turn has obligations to **audit** the control activities carried out at national level.

- **Enforcement:** Member States shall take appropriate measures, in particular administrative and judicial steps, to **prevent or stop the unlawful use of PDO and PGI**, including without any prior claim or request having been made ("ex officio" protection). For spirit drinks the agricultural scheme provides protection against unlawful use also with regard to goods entering the customs territory of the Union without being released for free circulation, e.g. goods in transit.[139]

**Ongoing agricultural GI's Impact Assessment (IA)**: At the time of writing this impact assessment report (autumn 2021), no legislation has been proposed yet[140]. Therefore, the relevant features of the new system described in this section of the IA, are based on the draft impact assessment on the reform of existing PGI schemes[141], and its preferred option. Hence, under this option, the ongoing agricultural PGI schemes revision would cater for extending registration at EU and international level to CIs products. As regards protection and enforcement, the preferred option points to the establishment of a single set of control rules for all sectors while leaning on the general framework of the OCR. This would also apply to CI products, which would also be covered by the OCR and by the extended protection of "goods in transit". The revision may also foresee the possibility of eliminating the Commission's audit obligations.

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[137] There are currently 16 Member States that have applied for reimbursement of control costs under the EU rural development fund.

[138] The MANCP shall cover not only controls related to the use and labelling of protected designations of origin, protected geographical indications and traditional specialities guaranteed but also all other controls governed by the Official Control Regulation (EU) 2017/625.

[139] Art. 21 (4) Regulation (EU) 2019/787 (see also recital 24). Similar provisions also exists in Art. 9 (4) EUTM Regulation (see also recital 16) and in Art. 10 (4) TM Directive. In addition, similar provisions are intended to be inserted into the EU Design Regulation and the Design Directive in the course of the upcoming design reform.

[140] The final proposal of the Commission, as well as the legislation adopted by the European Parliament and the Council, may be partially different from what is the outcome of the impact assessment.

[141] The ongoing reform of PGI schemes will uphold the specific GI requirements for wines and spirit drinks and hence maintain distinctive rules in the common market legislation for wines and in the spirit drinks regulation. The different forms of GIs will be maintained: 'Protected Designations of Origin' and 'Protected Geographical Indications' for wines and for agricultural products and foodstuffs, and 'Geographical Indications' for spirit drinks. One of the current 4 schemes (aromatized wines) will be absorbed into the agricultural products and foodstuffs GIs under the 2021 Common Agriculture Policy (CAP) reform.

Existing national *sui generis* CI titles would be absorbed into the EU wide scheme.

5.2.3. Option 2 - Self-standing EU-Regulation creating *sui-generis* GI protection (PO2)

This policy option would consist of adopting a regulation to establish a *sui generis* GI protection system for CI products, building on the existing GI scheme for agricultural products but adapting it further than PO1 to craft and industrial products.[142] GIs would be protected by an EU title in all EU Member States, which would be the basis for obtaining international protection of a GI in the framework of the Lisbon system and under bilateral trade agreements.[143] The term of protection of the EU title would be unlimited, provided the conditions continue to be met by the producers. The EU title would also be accompanied by a voluntary use of GI logo to increase visibility and raise awareness for consumers. Under a language regime similar to the one used for PO1, the documents, such as the product specification, its summary (so called "single document") and accompanying documents would be submitted in one of the official languages of the Union. Before publishing the application for worldwide opposition in an electronic register, the single document would be translated into all official languages of the Union. Decisions on registration and on rejection would be published in the register in all official languages of the Union.

Distinct elements compared to PO1 would relate to decision on the type of territorial link required to offer protection, the level of involvement of national authorities in the registration procedure, the EU entity in charge of registration at EU and international level, and the system of control of enforcement including the role of private operators therein.

**PO2 - 2.1. Territorial link**

To qualify as a GI under the new protection scheme, a specific 'causal link' between the CI product's quality, reputation or other characteristics and its designated geographical origin would be required. The GI could be either a PDO or a PGI, depending on how much of the product's raw materials must come from the area, or how many production steps take place within the specific region (see Box 3 above). Hence, two sub-options can be specified:

**A.** *PDO:* Under a PDO protection, the quality or characteristics of the product are **essentially or exclusively linked** to the particular geographical environment of the place of origin; and **all stages of the production process must take place in the defined geographical area**;

**B.** *PGI:* Under a PGI protection, a particular quality, reputation or other characteristic of the CI product are **essentially** attributable to its geographical origin; at least one of the stages of production, processing or preparation takes place in the region.

[142] Using the term "craft and industrial" defining the scope of the new regulation would avoid ambiguity and avoid overlaps with the existing regulation on agricultural products, because it would distinguish between the raw material and the final product (e.g. "wool" or "leather" as opposed to "tweed" and "leather shoes"). The term "industrial" products could be considered as being too vague as it could extend to mass production. On the other hand, it should be taken into account that production methods evolve and that therefore, the definition of the scope should be flexible. Also, authentic products might be produced at mass scale (e.g. Solingen cutlery, Limoges porcelain).

[143] Exceptions would include the pre-existing national titles registered by "old" Lisbon states which would have acceded to the Geneva Act.

**PO2 - 2.2. Involvement of national authorities in the registration procedure**

**A.** *Two-stage system***:** The new EU GI title could be based on a two-stage registration model, following the GI scheme for agricultural products. The first stage would be at the level of Member States, where national or local authorities would play a first examination role over local producers' agreed product specifications and GI applications. This examination would be based on a set of EU eligibility criteria, and national authorities would be allowed to charge administrative fees (for the application, registration, amendment and cancellation). Following the first stage of the national scrutiny, the second stage would be at EU level, with an EU entity taking a decision on registration[144], where no fees would be charged. Exceptionally, a flexible mechanism could be foreseen for those Member States that would have no interest in setting up the necessary infrastructure for the purposes of handling the first stage of the CI GI applications procedure, by delegating such role to the EU level or to another interested national competent authority.

**B.** *One-stage system*: The alternative would be to create a one-stage registration system whereby national authorities do not participate in the examination and registration (similar to PO3).

**PO2- 2.3. EU entity in charge of registration at EU level and at international level**

**A.** The *European Commission* would be in charge of the EU level stage of registration and act also as the Competent Authority under the Geneva Act of WIPO's Lisbon Agreement to handle registrations of EU GIs at international level. All costs of running the system would be covered from the EU budget.

**B.** The *specialised IP Agency, EUIPO* would be in charge of the EU level stage registration and would also act as Competent Authority under the Geneva Act of WIPO's Lisbon Agreement to handle registrations of EU GIs at international level. All costs of running the system would be covered from the EUIPO budget.

**PO2 - 2.4. Control and enforcement**

**A**. *Replicating the control and enforcement model of the PDO/PGI agricultural schemes* (see PO1)

**B.** *Streamlined control with a strong enforcement model*

This option would foresee the following distinctive elements compared to Option A:

- **Self-certification** (first party conformity assessment)**:** Member States would designate competent public authorities who would be responsible for the control and organisation of verification, monitoring and enforcement. However, public authorities could foresee the right of producers to self-certify compliance with the product specifications and the CI GI regulation. Hence, producers could have the choice between self-certifying compliance with the GI specifications and the CI GI Regulation, or have recourse to eligible (accredited) private entities like certification bodies or natural persons (experts).

  The producers' right to self-certify compliance could apply to:

[144] In addition, the Board of Appeal would be at EU level (See Annex 9 for further information).

- the **verification**, which includes the checks on the product characteristics and production processes of specific candidate GI producers, and/or;
- the **controls and monitoring** on GI producers, after the GI title is granted.

Format of this declaration should be as simple as possible, flexible and adjusted especially to the needs of micro firms that are frequent among artisan producers.

This option is inspired in the *New approach* and *New Legislative Framework* applied to EU harmonised products and the conformity assessment procedures foreseen therein, notably the so-called first-party conformity assessment or self-declaration of conformity assessment (Module A)[145].

- **Random inspections by national authorities (or delegated certification bodies) coupled with a deterrent system of penalties.** As with the New Legislative Framework, where market surveillance authorities play a pivotal role carrying checks to ensure that only compliant products are placed in the market, and self-declarations from producers are reliable[1], this Option would foresee the possibility by the national competent authorities to carry out random inspections and impose effective, proportionate and dissuasive penalties in case of GI infringements, including against GI producers that provide inaccurate or misleading information in their self-declarations. This would increase the "ex-officio" activities carried out by national authorities to monitor GI products in the market.
- **Streamlined reporting obligations by national authorities:** Contrary to Option A where Member States have to submit multi-annual control programmes and annual reports to the Commission, coupled with audits performed by the Commission, this option would only foresee a reporting obligation every four years by the national authorities to the Commission on their GI control and enforcement strategy and results.
- **Enforcement:** The basic features of the enforcement scheme under the currently revised agricultural GI system (PO1) should be maintained, including the protection against unlawful use of "goods in transit" entering the customs territory. Hence, enforcement authorities designated by Member States shall take appropriate administrative and judicial measures to prevent or stop the unlawful use of protected CI products that are produced or marketed in the respective national territory. This scheme should be accompanied by an **alert system** against the **abusive use of CI GI in the internet,** in the context of domain names registrations, as it is in place for EUTM as regards the .eu top level domain.[146] Applicants (producer groups) when filing an application would have the possibility to opt-in to receive an alert as soon as a .eu domain name is registered that contains the protected CI GI.

[145] See Annex 2, Module A of Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (Text with EEA relevance).

[146] As part of the collaboration between .eu TLD Registry and EUIPO holders and applicants of a EUTM can opt-in to receive alerts as soon as .eu domain name is registered that is identical to their EUTM (application). By receiving such alert, EUTM holders are informed much faster and may take appropriate action much sooner.

**PO2 - 2.5 Co-existence of EU and national titles and regimes**

**A.** CI GIs would be protected by an *EU title that replaces the existing national GI regimes* and absorbs national GI titles. This would be in line with the GI schemes for agricultural products, resulting in an EU GI regime uniformly based on EU-level rights only.

**B**. The alternative would be to *introduce an EU GI title for CI products, while keeping a parallel system for national GI applications*. This would result in a similar EU legal framework as for designs and trade marks.

5.2.4. Option 3 - Trade mark reform (PO3)

This option would consist of reforming the EU trade mark system, in particular the EU trade mark regulation (EUTMR), so as to make available to producers of CI products the possibility to apply for the registration at the EU level of a name guaranteeing a specific product quality linked to a geographical region.

Option 3 could either be based on the reform of the EU collective mark or the EU certification mark. Under current law, neither of these IP titles allows for, or adequately ensures, certifying a specific product quality linked to a geographical origin at EU level[147]. Both the EU certification trade mark and the EU collective trade mark would therefore have to be adapted under option 3:

- EU certification mark

The certification mark allows its owner to certify goods in respect of material, mode of manufacture of goods, quality, accuracy or other characteristics. The owner of a certification mark (a natural or legal person, an institution, or authorities and bodies governed by public law) cannot run a business involving the supply of the goods of the kind certified. The owner has a duty of neutrality in relation to the interests of the producers of the goods it certifies.

The EU certification mark expressly prohibits the certification of geographical origin (Article 83(1) EUTMR). Option 3 would therefore require removing this prohibition, which would mean an exception to the principle of trade mark law that purely descriptive signs should not be protected.[148]

- EU collective mark

The essential function of the EU collective mark is to distinguish the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings (Article 74 EUTMR). Only associations of manufacturers, producers, suppliers of services or traders, as well as legal persons governed by public law may apply for EU collective marks. As an exception to the principle of distinctiveness[149], the

[147] See Annex 7 – Key differences between *sui-generis* GI and trade mark regulation.

[148] See Art. 7(1)(c) of the EUTMR which prohibits the registration of trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, **geographical origin** or the time of production of the goods or other characteristics (absolute ground of refusal).

[149] The Court of Justice of the EU defines distinctiveness as capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (cf. judgment of 22 June 1999, C-342/97, Lloyd Schuhfabrik).

EU collective mark can designate the geographical origin of the goods or services it covers. The regulations governing the use of a mark referred to in Article 74(2) EUTMR shall authorise any person whose goods or services originate in the geographical area concerned to become a member of the association which is the owner of the mark.

It should be noted that the EU collective mark does not allow for the certification of the link between product qualities and the geographical origin. Its essential function is to guarantee the collective commercial origin of the goods sold under that trade mark, and not to guarantee their collective geographical origin.[150] **PO3 would therefore require introducing the function of certifying the "quality-geographical origin" link to the collective mark.** Also, given that the EU collective mark today shall not be invoked against a third party who is entitled to use a geographical name (Article 74(2) EUTMR), this aspect would need revision to also ensure an effective system of control and enforcement (see Specific Objective 2).

In addition, both the EU collective mark and the EU certification mark would have to be adapted in order to comply with the **international obligations resulting from the Geneva Act**. In particular, the Geneva Act sets out that the scope of protection of GIs extends to **protection against evocation**, which is not the case for trade marks. Also, according to the Geneva Act, **GIs cannot become generic**, meaning that they cannot, as is the case for trade marks, become the common name in the trade for a product or service for which they have been registered.[151]

Administration and registration: the registration system would be based on the current EUTMR which entrusts the registration, opposition and cancellation procedures of EU trade marks with the EUIPO. The EUIPO examines the signs filed for application on the basis of absolute grounds for refusal (e.g. trade marks which are devoid of any distinctive character) and relative grounds for refusal (e.g. risk of confusion with existing trade marks).

For the certification mark, the EUIPO assesses the content of the regulations governing the use of EU certification marks according to Article 17(1) EUTMIR[152], e.g. name of the applicant, representation of the EU certification mark, goods to be covered, as well as the characteristics of the goods or services to be certified by the EU certification mark. However, the EUIPO does neither verify whether the relevant products meet the requirements of the regulations of use, nor whether the certification bodies indicated in the regulations of use correctly control the conformity with the latter.

For the collective mark, the EUIPO assesses the regulations governing use against the legal requirements provided for in detail in Article 16 EUTMIR. These mandatory content requirements do not refer to any specific link between the goods and the geographical area contained within a sign. As a result, even if the applicant would include in the **regulations of use** information on this specific link, the EUIPO's assessment would not extend to verification of its existence because it is not mandated by the legal text and the EUIPO should go no further than assessing whether the requirements under the EUTMR are met.

[150] Judgment of the Court of Justice of the EU of 20 September 2017, The Tea Board, Joined Cases C-673/15 P to C-676/15 P.

[151] See Articles 11 (Protection against evocation) and 12 (Protection against becoming generic) of the Geneva Act.

[152] Implementing Regulation (EU) 2018/626 laying down detailed rules for implementing certain provisions of Regulation (EU) 2017/1001 on the European Union trade mark.

Registration of a certification mark or of a collective trademark at the EUIPO is subject to a fee of EUR 1,500 (EUR 1,800 if in paper form). The basic protection period is ten years. Cost of each renewal for another ten year period is the same as above.[153]

Control and enforcement: Control and enforcement are in the responsibility of the trade mark holders (private law-approach).

### 5.3. Options discarded at an early stage

The options below as well as Option 0 are not considered as viable policy choices as they do not result in compliance with the Geneva Act of the Lisbon Agreement.

#### 5.3.1. Recommendation

This option would consist of adopting a recommendation at EU level proposing to Member States to establish national protection systems in order to certify the link between specific product qualities and the origin of CI products.

Such a recommendation would not create new intellectual property titles. It would merely aim at encouraging Member States to establish national protection systems. Member States would be free to determine through what kind of system they would try to achieve this objective (i.e. by means of a *sui-generis* protection system, certification trade marks etc.), how the registration would work and how compliance with the system would be monitored and enforced.

We disregard this option since a recommendation or voluntary measures would be questionable regarding the obligations resulting from the Geneva Act. The Geneva Act requires the EU as a signatory to put in place a system which allows for the protection of third countries' GIs within the EU and the protection of EU GIs in the contracting states. This option would not create the basis for the Commission to file international applications to WIPO's International Bureau to seek protection for registered EU GIs in third countries nor to protect GIs from third countries within the EU (see Section '2.1.1 Lisbon/Geneva international protection route barred' and Annex 6). Member States alone could not ensure such protection as, except for seven, they are not party to the Lisbon system on their own under the Agreement, and the opportunity for new EU Member States not party to the Agreement to join the Geneva Act following the EU's accession remains uncertain[154].

Furthermore, a recommendation directed at Member States could merely raise the awareness about the problems producers of authentic CI products face. It would have a very limited harmonizing effect concerning the scope, the eligibility conditions, the monitoring and the enforcement of GI protection schemes. It would most likely not have any effect on the fragmentation of GI protection within the Internal Market. First, this option would work only on a voluntary basis and secondly, there are already significant differences between national laws with regard to the level and scope of protection currently provided at national level which are likely to remain. And it is uncertain if the six EU Member States with neither GI protection nor certification marks currently would follow the recommendation (see Table A.8.1 in Annex 8).

[153] Fee for the second class of goods included in application is EUR50, and for third and above EUR 150, https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo

[154] EUCJ case C-24/20 (pending).

5.3.2. Approximation of national laws

An EU directive could be adopted in order to approximate national laws on the protection of GIs for CI products. By a directive, the EU would create obligations to achieve specific objectives for the protection of GIs, for example in terms of the term and scope of protection, the territorial link, or procedural aspects such as application and registration. The directive would leave it to Member States how to reach these objectives, including with regard to the nature of the protection system (i.e. *sui-generis* protection system, certification trade marks etc.) as well as with regard to control and enforcement.

In addition, the directive would provide for an obligation to mutually recognise a national decision to protect a GI for a specific CI product.

On the basis of this option, producers would obtain national GI protection titles, which would be recognised in all other EU Member States. These titles would be registered in national databases.

Given that this option would be based on the approximation of national laws, and on setting up national GI titles rather than an EU GI title and an EU GI registration scheme, it would not foresee an EU body competent to deal with the registration of GIs titles at EU and international level. The option could foresee that the listing of all national GIs titles in the EU are made public.

Approximation of national laws would not be sufficient to meet the requirements of the Geneva Act. According to Article 9 thereof, the EU, as contracting party, shall protect registered geographical indications on its territory, within its own legal system. Approximation of national laws and mutual recognition, even based on full harmonisation, would not establish an EU right protected on its territory, but rather create a bundle of national GI rights.[155] In addition, it would still require the creation of an entity at EU level that handles GI registrations for the purposes of international GI registration system throughout the EU and for the communications with the WIPO international bureau as required under the Geneva Act.[156]

As a result, through the approximation of national laws in the EU, a GI owned by a producer in a third country could not be effectively protected throughout the EU. As noted in the section above, Member States alone could not ensure such protection as most of them are not party to the Lisbon system on their own under the Agreement, and the opportunity for new EU Member States not party to the Agreement to join the Geneva Act following the EU's accession remains uncertain. Moreover, harmonised national GI rights would not qualify for EU protection under EU bilateral trade agreements with third countries.

Compared to a recommendation, a directive could result in more clarity and legal certainty regarding the scope, the eligibility conditions, the monitoring and the enforcement of GIs for CI products with the EU. (See Annex 11 for further details related to the possible harmonisation of existing national systems). Still, compared to a directly applicable regulation (foreseen in policy options 1 to 3), the implementation of a

[155] Cf. the Madrid and Hague Agreements for international registrations of trade marks and designs where the EU is contracting party based on the EU trade marks and designs, not on the basis of national IP rights.
[156] Article 3 of the Geneva Act: "Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act and the Regulations."

directive would take a long time and be subject to divergent national implementations. In practice, legal uncertainty might therefore be diminished, but not completely disappear.

## 6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

Policy options 1 (Extending the existing PGI/PDO schemes for agricultural products), 2 (Self-standing GI regulation) and 3 (Trade mark reform) allow to link the quality of the product with its territorial origin at the EU level.

The following assessment focuses on the distinctive impact of the options for the cost and benefits for key stakeholders: producers, public authorities and consumers. Impacts that do not differ by option – such as shared impact on employment or economic growth - are presented at the end of this Section. For a detailed assessment of the costs of the policy options see Annex 12 on Costs calculations.

### 6.1. Option 1 - Extending the existing GI scheme to CI products

Producers

*The PGI scheme gives the producer groups control over the product specification and the choice over a certifying body allowing them to effectively manage their GI asset.* The process of applying for a PGI requires the definition of so-called "specifications," which identify the required conditions for the GI label: the characteristics of the product, the production method, and the geographic area of production. Such involvement gives the producer group a strong role in managing and regulating the GI asset. *The PGI scheme is inclusive to all producers in the region*. Once a PGI for a product is registered, all producers within the geographical region who comply with the product specification, regardless of whether or not they are a member of the association that originally applied for the registration, are entitled to use the PGI label on their product. Adding between 164 and 300 EU CI GIs[157] to the PGI scheme would increase the number of protected PGIs by around 25%[158], and thus is not expected to become such a major part of the existing GI system as to overburden it with new registrations.

*Registration procedure*: Currently the first stage of the two-stage system with national authorities carrying out a preliminary procedure includes scrutiny of the application (including as to the territorial link) and opposition. The latter allows local producers who are not part of the producer groups and other parties to submit their observations. Local authorities are best placed to identify and describe the quality due to the territorial link as well as to deal with potential local conflicts. Once the application passes the national phase, it is transferred to the EC for further assessment. 133 producers of CI GI products gave their opinion in the public consultation on how many steps the registration process should involve. Almost three-quarters of them (96) preferred a two-stage procedure including first a national stage, next an EU-level stage. On the other hand, almost a quarter of respondents (28) preferred a one-stage procedure at EU level only.

*Registration cost*: When it comes to the registration cost, the legal procedure to register a PGI indication at EU level is free of charge. At the first application step, eight Member States (out of 27) charge application fees. These fees amount to a few hundred EURs, in

[157] 163 is estimated by VVA & AND International (2021), supra note, p.157; 300 products was identified in the VVA et al (2020).
[158] There were 1,182 PGI protected on 1/1/2020, out of total of around 3,200 protected Geographical Indications in the Agricultural system, AND International *et al*. (2020), supra note, p. 33.

range between EUR 145 in CZ and EUR 900 in DE,[159] and represent a marginal cost from the perspective of the producer group (or individual producers if there is no producer group). This is comparable to the level of fees that national patent and trade mark offices (PTOs) charge for registering a GI title for CI products at national level (between EUR 130 to EUR 500 as reported in Annex 8). We therefore expect that a similar level of fees would apply to the national phase for European PGI scheme for CI products. All costs connected with drafting an application are estimated on average at EUR 15,000.[160]

*Control and enforcement:* Under PO1, the control assessment (CA) activity is performed by a third party (person or organization) that is independent of the seller or the buyer. This is usually called 'certification' and provides the highest level of assurance regarding the state of a given product.

**Table 6.1.1.** Annual control and enforcement cost by size of producer group

| | Micro* | Small | Medium-sized | Large | All |
|---|---|---|---|---|---|
| Enforcement cost as % of turnover | 1.7% | 1.0% | 0.5% | 0.1% | 0.2% |
| Cost in EUR** | 8,500 | 52,500 | 143,500 | 790,500 | 190,000 |

*Notes:* Case studies carried out in the context of the evaluation support study estimate that enforcement costs (control and compliance costs) represent, on average, 34.2% of a producer group budget. * 50% of GIs were under EUR 1 million sales value in 2017. ** Based on middle of range of turnover for a given size class. *Source:* Own calculations based on AND International *et al.* (2020) pages 176-178.

Table 6.1.1 provides an overview of annual control and enforcement cost under the existing PGI scheme. This cost was estimated to be around 1.7% of the turnover for a producer group with total sales below EUR 1 million, 1% for a small producer group (sales below EUR 10 million), 0.5% for a medium-sized producer group (sales < EUR 50m) and around 0.1-0.2% for the rest[161]. The relative cost of certification decreases with turnover, making it more affordable for larger, more industrialized clusters of GI producers.

**Table 6.1.2.** Overview of control costs (single producer) for CI products in France (2021)

| | Action | Cost without VAT |
|---|---|---|
| *Verification* | Drafting of the control plan | between EUR 1,100 and EUR 2,300 |
| | First certification assessment/audit | between EUR 350 and EUR 730 |
| *Control* | Follow-up audit | between EUR 290 and EUR 600 |
| *Other controls* | Additional controls * | between EUR 150 and EUR 1,000 |

*Notes:* * in the event of a serious violation of the specifications;
*Source*: Association Française des Indications Géographiques Industrielles et Artisanales (AFIGIA).

Another control cost benchmark is shown in Table 6.1.2 and refers to the cost by producers of CI products protected under the French *sui generis* system where the control has to be performed by independent and accredited Conformity Assessment Body (see Box 4 for description). Drafting of the control plan and first audit costs between EUR 1,450 and 3,030 and reflects verification costs. The cost of follow up audit is between EUR 290 and EUR 600 to be covered every one, two or three years in case of stone mining (see Box 4).

[159] See AND International et al. (2020), supra note, p. 175.
[160] Own calculations based on VVA & AND International (2021). See Annexes 4 and 13 for assumptions.
[161] See AND International et al. (2020), supra note, Table 41 on page 176.

The limitation to the third party conformity assessment is that it encourages the creation of companies rather than individual crafts to join the PGI scheme. This point can be illustrated with the following example. In a French producer group of 100 self-employed lace makers, each craftsman and craftswoman needs to bear the bi-annual certification cost. This results in EUR 35,000 and 73,000 of control cost (based on table 6.1.2). This should be compared to a company employing 100 lace makers that would need to pay for one certification only (EUR 730). Furthermore, only individual craftsmen who are able to get high mark-ups, i.e. producers of luxury products such as diamonds or *haute couture* garment, will find the system of third party conformity assessment attractive and affordable.

Using third party conformity assessment for CI products may have further limitations. Competition between private bodies offering such service may be limited given little demand. It may not be attractive for private certification bodies to develop certification schemes fit for CI GI products. There are currently three certification institutions existing in France[162] and there are about ten for agricultural products, foodstuffs and drinks. Little competition may result in high costs for the groups of producers.

**Box 4:** Control under the French national *sui generis* system for CI GIs. [163]

Independent and accredited[164] Conformity Assessment Bodies (CAB) carry out the controls. The French law does not determine the frequency of control. Producers can choose between two kinds of CABs: either an inspection or a certification body. The inspection bodies carry out the control operations and send their report to the Defence and Management Body (DMB) that represents the professionals for the GI concerned. DMB decides on measures to sanction in case of failure. The certification bodies decide whether to grant, maintain or extend the certification, as well as on measures sanctioning failures. The French Intellectual Property Office (INPI), which grants CI GIs, supervises the work of CABs.

Producers of CI products will benefit from additional enforcement actions that will be carried out by public bodies.[165]

Stakeholders including AREPO[166] advocate that the same rules of protection that are put today under the EU PGI schemes, ex officio included, should apply to CI GI products. They claim that the quality of the existing GI schemes is well-established among EU consumers and its credibility stands from controls and enforcement that should not be undermined.

[162] CERTIPAQ, Bureau Veritas Certification and FCBA.

[163] See Article L-721-1 to L722-17 of the French Intellectual Property Code : Section 2 : Indications géographiques protégeant les produits industriels et artisanaux (Articles L721-2 à L721-10) - Légifrance (legifrance.gouv.fr)

[164] by a National Accreditation Body within the meaning of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93. In France this body is the Comité Français d'Accréditation (COFRAC) www.cofrac.fr

[165] EUIPO (December, 2017) Protection and Control of Geographical Indications for Agricultural products in the EU.

[166] AREPO, Position on an EU-wide Protection of Geographical Indications for Industrial and Artisanal Products, June 2021.

The study on enforcement assessed verification cost at EUR 6,000 per producer group (composed of 10 members) for all the options 1 to 3; and enforcement and management cost at EUR 3,000 for this option (see Annexes 4 and 13 for assumptions).

Less than half of businesses responding to the public consultations (46%) were in favour of PO1 while almost a quarter (27%) were against it.

*Use of the GI label:* Information about the product's qualities is conveyed principally by the producers or producer groups. In some cases, a *private logo* may be a good vehicle to communicate GI's specific qualities to consumers. This is the case where consumers are aware and trust such scheme. Some producers, are therefore in favour of voluntary use of GI label as it allows them to label the product in the way they consider most appealing to consumers, according to their marketing strategies. Furthermore, in case of CI GI products it might not be feasible to place it on certain products (e.g. diamonds).

Public Administration

The current PGI system for agricultural products and foodstuffs, wine and spirit drinks is under revision. Ongoing revision aims, among others, at streamlining the process of the first registration that should shorten the time frame in which the applications are registered today (22 months on average as of 2018),[167] lowering the control cost for the Member States (EUR 23,500 per GI today)[168] as well as lowering the effective registration cost per application at the EU level (EUR 33,500 for an average 12-page application file[169] that is entirely paid from the EU budget) by outsourcing the registration to EUIPO.

*EU level expenses*: Currently registration cost at the EU level is estimated at EUR 33,500. Given the ongoing reform of the existing PGI/TSM schemes, the efficiency gains of up to 26% could be expected due to outsourcing registration activities to the existing EU agency[170]. Moreover, CI GI applications are likely to be less complex than agricultural ones, thus cost of assessment was estimated at EUR 20,000 (see Annexes 4, 13). Moreover, EU level enforcement and management costs are estimated at EUR 9,000 per CI GI annually, including e.g. operation costs connected with publication of CI GI registrations in the existing eAmbrosia[171].

*Cost for Member States (registration):* Under PO1 Member States will have to decide which body to designate for the first step of the registration process. Under the current PGI schemes, the first step is managed either by the Ministry of Agriculture or an administrative body related to it (e.g. *Institut national de l'origine et de la qualité* (INAO) in FR). Exception is SK where it is a PTO. In the Member States that provide *sui*

[167] Impact assessment accompanying the Regulation (COM(2022) 134 final) on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products..
[168] AND International et al. (2020), supra note, page 173.
[169] Ibidem. This cost includes administration, translation of files and letters and decision/regulation, scrutiny and cross-check, internal consultations in the European Commission Directorate General for Agriculture and Rural Development which manages registration at the EU level.
[170] Based on ICF GHK. 2013. Cost Benefit Analysis for the delegation of certain tasks regarding the implementation of Union Programmes 2014-2020 to the Executive Agencies (Final Report 19 August 2013), pages 63 and 135. (e.g. delegation of programme management to EASME was estimated to deliver savings of 26% relative to implementation by the Commission itself)
[171] A legal register of the names of agricultural products and foodstuffs, wine, aromatised wine products and spirit drinks that are registered and protected across the EU.

*generis* GI protection for CI products, the registration process is managed by the national PTO. This process requires 1 FTE (FR) or part time engagement of two examiners (HU). PTOs are very efficient in examining the CI GIs as it takes between four and twelve months to complete national registration for CGI as opposed to 22 months for PGI (see Table A.8.1. in Annex 8). As 16 MS have already resources committed to CI GI, for the remaining 11 addition/reallocation of 0.6 to 1 FTE should be necessary. Member States' overall annual registration cost is expected at EUR 7,500 per CI GI and verification cost at EUR 600.

*Cost for Member States (control and enforcement):* For the current EU PGI schemes the cost of control and enforcement amounts to 80% of the total national authorities costs.[172] While PO1 would exempt certain controls that are not relevant for CI GI (e.g. food quality), monitoring the market and launching actions against potential infringers (e.g.: misuse of protected name, infringement on rules of production or origin of product) would still constitute the bulk of national expenses. The cost of enforcement and management of one GI was estimated at around EUR 3,900.

*Impact of international registrations:* An increase in international registrations of CI GI following EU accession to the Lisbon agreement can be substantial. As reported in the problem definition, China and India alone can contribute up to 800 GIs in the near future. This is expected to put a considerable strain on public budgets in the system where public authorities are responsible for most of the enforcement. Just to check CI GIs of these two countries could almost quadruple the enforcement budget of EU Member States to EUR 4.3 million.

Almost half (48%) of public authorities responding to the public consultations were against selecting PO1 and around third (35%) were supporting it.

Consumers

The Study supporting the evaluation of the EU PGI schemes[173] shows that they provide true and fair view of the products and authenticity and clear and reliable information to consumers. This credibility is built on three blocks: verification of the territorial link by national authorities as well as strict system of controls (verification and monitoring) and enforcement. By extending the existing GI system to CI product, consumers of CI GI products could benefit from the credibility and trust attach to existing GI schemes.[174]

Consumers, in their purchasing decisions, rely on their own knowledge and information put on product labelling. For product categories, that has built their brand recognition on quality of origin or benefit from origin information embedded in the existing labels, consumers may be able to make the right choice (condition that they are aware and trust those schemes). For other categories, the use of specific PGI label may be critical for consumers to make informed decisions. Therefore, mandatory use of GI label may be desirable from consumer point of view.[175]

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[172] AND International, ECORYS & COGEA (2020, December), supra note, page 174.
[173] AND International *et al.* (2020), supra note, see Executive Summary.
[174] Knowledge of other GI-protected products appears to be relevant for the probability of correctly identifying the authentic CI product. VVA *et al.* (2020), supra note, p. 61.
[175] During the January 2022 meeting of the Commission expert Group on Industrial Property Policy Member States were divided on the issue of logo, with ten asking for the logo to become mandatory and four asking for it to be voluntary. Six Member States would prefer the use of the existing PGI logo while four would prefer the use of a new CI GI logo.

More than half (57%) of EU citizens, NGOs and researchers who replied to the public consultations favoured PO1, while around a quarter (23%) were against it.

**Table 6.1.3.** Summary of cost of CI GI protection under PO1

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15,000 | 7,500 | 20,000 | 42,500 |
| Verification/Control* | 6,000 | 600 | 0 | 6,600 |
| Enforcement & management** | 3,000 | 3,900 | 9,000 | 15,900 |
| Total | 24,000 | 12,000 | 29,000 | 65,000 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.23 | 0.60 | 1.28 |
| Verification/Control* | 0.18 | 0.02 | 0.00 | 0.20 |
| Enforcement & management** | 0.09 | 0.12 | 0.27 | 0.48 |
| Total | 0.72 | 0.36 | 0.87 | 1.95 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 and 13 for detailed calculations and assumptions.

### 6.2. Option 2 - Self-standing EU Regulation

Producers

*Territorial link*: CI products differ in their link to the territory. On one hand, products such as marble stone can prove link to the geographical environment based on the soil conditions as well as local know how related to the processing of the stone (methods of production). On the other, Antwerp Diamonds are mined worldwide but processed (cut and polished) in Antwerp. The former would qualify for protection under PDO and the latter for PGI scheme. Research has shown that the link to a specific place for CI products is predominantly based on the product's history and on its distinctive traditional method of production and not so much on the link to elements of the geographical environment such as soil or weather conditions. There are thus only few products that would qualify for PDO.

Stakeholders agree with these findings. 67 of respondents of the public consultation expressed an opinion about the definition of the link between the product and its place of origin. More than 80% of these (55) selected elements characteristic of the definition of EU geographical indications, where the required link is less strict as compared to the definition of EU appellations of origin. The limited use of the PDO schemes for artisanal products is also highlighted by the Association of European Regions for Products of Origin (AREPO) in their position paper.[176] **Therefore, we conclude that PGI scheme (Option 2.1.B) rather than PDO (Option 2.1.A) is better suited for the characteristics of CI GI products**.[177]

However, not all products falling into the scope of application will qualify for GI protection. The proposed regulation will condition GI protection on eligibility criteria to qualify for protection as a GI, particularly based on the so-called territorial link between

[176] AREPO, Position on an EU-wide Protection of Geographical Indications for Industrial and Artisanal Products, June 2021.

[177] The empirical analysis showed that the method of production is often essential in order to identify the product and distinguish it from its generic and non-localised variants. See Zappalaglio, A., Guerrieri, F., & Carls, S. (2020). *Sui Generis* Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task? IIC-*International Review of Intellectual Property and Competition Law*, 51(1), 31-69.

specific product characteristics and a geographical place. To be granted GI protection, the product has to originate in a specific place, region or country and its given quality, reputation or other characteristic has to be essentially attributable to its geographical origin. In addition, at least one of the productions steps has to take place in the defined geographical area.

As an additional "safety valve", a designated registration authority will establish guidelines for examination. They will specify the above mentioned eligibility criteria to ensure legal certainty and to avoid an overly broad GI protection.

*Control and enforcement* are meant to ensure that products carrying PGI labels comply with the product specifications and that the information conveyed via labelling is verifiable and credible. There are two sub-options replicating the control and enforcement model of the PDO/PGI agricultural schemes (2.4.A.) and streamlining control with a strong enforcement model.

These sub-option differ among other aspects, in their approach to conformity assessment (CA): third party CA (Option 2.4.A) and first party CA, also referred to as self-declaration (Option 2.4.B).

Third party conformity assessment provides the highest level of assurance regarding the compliance of a given product with its specification but can be costly as certification bodies are usually for profit organizations. The costs and limitations of the third party CA are discussed in Section 6.1. On the contrary, self-declaration is suitable for the *low risk products* where producers can be trusted to provide reassurance that the specification has been followed. Today, first party CA is used to assess health and safety of the vast majority of machinery put on the EU single market.[178] Consequently, it should be sufficient also in relatively less important (compared to health) case of declaring conformity with GI product specifications. Cautious estimates show that self-declaration lowers compliance cost by EUR 300 per producer group.[179]

In general, third party CA is justified when the *level of risk* is higher or when a market is big enough to justify the expenditure. CI GI market is very diverse and often small. Self-declaration may therefore be seen as an affordable option for micro companies and self-employed artisanal. Self-declaration alone, however, may not deter potential fraud behaviour and may dilute the consumers' trust embedded in the PGI label. Such concern is put forward in the recent oriGIn position paper.[180] Under Option 2.4.B, therefore, self-declaration is an option that can be introduced by Member States, either for the verification phase or/and the monitoring and control. This would be coupled with a system of random *ex-officio* checks by public authorities and a set of effective, proportionate and dissuasive penalties for non-compliance that aims at deterring possible fraud behaviour by producers. **Consequently, Option 2.4B seems preferred from the point of view of producers.**

**Box 6.** Example of fines under Italian *sui generis* GI law

[178] According to Commission evaluation supported by a study this option is effective in protecting the health and safety of machinery users and cuts costs significantly. SWD(2018)160 - Evaluation of the Machinery Directive 2006/42/EC, https://ec.europa.eu/docsroom/documents/29232.

[179] Evaluation of the Internal Market Legislation for Industrial Products (SWD (2014) 23) determined that an average cost of conformity assessment with third-part did not represent more than 5% of the total compliance costs incurred by firms.

[180] oriGIn EU, Position on a future system for craft and industrial GIs, November 2021.

In the case of Ceramics from Faenza, the use of the marks 'Artistic and Traditional Ceramics' and 'Quality Ceramics' by a registered producer without the fulfilment of the law requirements concerning production standards is punished with a fine between EUR1,000 and 25,000 and, in case of reiterated infractions, with the cancellation from the register of producers.[181]

*Enforcement*: same assessment as in PO1. In addition, under this option, producers would also profit from an EU **alert system** against the **abusive use of CI GI in the internet, in the context of domain names registrations,** that could be organised between .eu TLD[182] Registry and EUIPO mirroring the existing system set up for EU TMs. Holders and applicants of a CI GI could opt-in to receive alerts as soon as .eu domain name is registered that is identical to their GI (application). By receiving such alert, CI GI holders would be informed much faster and may take appropriate action much sooner. Such alert-system does not represent a cost for producers. The nine Member States which expressed on 15 October 2021 in a joint-non paper their strong support for an EU-wide *sui generis* protection system also gave importance to effective measures to stop the misuses and fraud of GIs in the internet including domain names.[183]

**Box 7.** Example of how infringements on Burgundy Stone are solved

Among 100 infringements identified, in 90% of cases the issue was solved through the submission of registered letters by the producers' group; about 10 situations were solved through the formal notice from a lawyer and only one infringement has led to a court case.[184]

Businesses responding to the public consultations were selecting PO2 as their most preferred choice (83% in favour, 13% against).

Public administration

*Control and enforcement:* Option 2.4.B has a potential to lower the cost of control for public authorities. Assuming inspections target around 13% of companies (same level as in the context of machinery),[185] the cost of controls for Member States are estimated at EUR 100 per GI[186]. **Given the preference of some Member State for low cost solution, Option 2.4.B seems also more appropriate for national administrations.** Member states would retain the right to require the use of third party certification for the verification phase and or the control and monitoring. Moreover, enforcement would be reinforced, entitling the competent authorities in coordination with producer groups to prevent the entry of CI GI infringing goods and their placement in all custom situations including transit, also when such goods are not intended to be placed on the EU market. Proportionate reporting obligations on national authorities to the Commission on their GI control and enforcement strategy and results would be expected only every four years.

*Involvement of national authorities in the registration procedure: One stage v. two stages*: Option 2 would replace the existing national GI titles/regime with the EU

[181] VVA & AND International (2021), supra note, p. 65.
[182] .eu top-level domain (TLD) for further information see: .eu top-level domain | Shaping Europe's digital future (europa.eu)
[183] Bulgaria, Czech Republic, France, Hungary, Italy, Poland, Portugal, Slovakia and Germany.
[184] VVA & AND International (2021), supra note, p. 66.
[185] SWD(2018)160, p. 26.
[186] 13% of enforcement cost of Option 1.

protection scheme. The resulting unique title would be granted at EU level only (like in the GI scheme for agricultural products). The proposed registration process at EU level under the new scheme could involve national authorities (Option 2.2.A: *two-stage system*) or not (Option 2.2.B: *one-stage system*). Annex 9 on procedural options carries out a thorough assessment of several options both for a two-stage system (see options 1.0, 1.1, 1.2 and 1.3 in Annex 9) and for a one-stage system (options 1.4 and 1.5).

The two-stage approach would follow the example of the GI schemes for agricultural products outlined in PO1 (as described in Section 6.1). Involvement of national authorities at the first stage, would allow for including local and regional expertise necessary to assess product specifications. Arguably it would be easier for local micro/artisan producers that could communicate in their own language, interact with administration they are familiar with and receive any other help and support. Resulting cost for national authorities would be the same as in PO1 (EUR 7,500).

Registration just at the EU level could be faster and more efficient due to elimination of national step as shown in the Annex 9. Consequences of no local scrutiny could be that applications are assessed only formally on correctness of the filled form. More thorough verifications of territorial links would require either contacts with local administration or some independent verification through e.g. independent research, consulting or requirement for supporting analysis attached to application form. Such option would be attractive for Member States that do not have necessary infrastructure for the purposes of handling the first stage of the CI GI application procedure. Furthermore, in case where local authorities would act on behalf of a producer and register the GI at EU level, the one stage procedure would be identical to the two stage one. However while the two stage approach forces engagement of local authorities (with advantages as described above, as well as disadvantages such as e.g. lack of expertise), such engagement for the one stage approach would remain voluntary (similarly to option 3).

Opinions received during the public consultations shows that the vast majority of stakeholders (96 out of 133) prefer a two stage procedure. Also producers associations - AREPO and oriGIn – are in favour of two-stage registration procedure. Furthermore, the nine Member States mentioned the two stage procedure as their preferred solution in the said joint-non paper to the Commission. **Consequently, Option 2.2.A is the preferred sub-option.**

*EU entity in charge of registration at EU level and at international level*: The relevant EU body in charge of managing the EU-level stage of the registration process could be the Commission services (Option 2.3.A) or a specialised EU body like the EU IP Office (EUIPO) (Option 2.3.B). Both have already an experience in dealing with case by case administration of applications or amendments procedures related to specific rights. The Commission's Directorate-General for Agriculture and Rural Development (DG AGRI), for historical and policy reasons stemming from the EU's exclusive competence on agricultural GIs and the EU's common agricultural policy together with its link to the rural policy area, is the EU entity dealing with agricultural EU PGI Schemes. They are equipped with all appropriate technical specialisation and expertise. This situation is untypical as the Commission's role focuses usually on instigating and implementing EU policies. As producers would be closer to the core of political decisions, this could lead to criticism of the transparency and bias of registration decisions. Cost for the Commission are estimated at EUR 20,000 as in PO1.

The Commission and the EUIPO can also both rely on their expertise and network in the field of cooperation with national IP authorities. That kind of practical routine within the

Commission is currently limited to national agricultural authorities and would have to be established at a different operational level in respect of national authorities dealing with CI GIs. The EUIPO is already more extensively linked to national authorities dealing with IP rights. For instance, the EUIPO cooperates with all intellectual property offices, that register trade marks, many of which do also handle CI GIs.

Outsourcing of standard task to an agency brings efficiency gains.[187] The EUIPO is an EU specialised agency with proven experience in handling registrations of other IP rights at EU and international level. The EUIPO has advanced IT tools that could support the new GI right (including management of registration at WIPO). EUIPO is already handling GIView[188], a database that offers a comprehensive overview of all EU (agricultural) GIs protected within the EU and in non-EU countries. EUIPO's further connectivity to the Commission's legal register database[189] for GI registration could ensure a comprehensive approach for all GIs (agricultural and CIs). In respect of agricultural GIs the EUIPO is envisaged by the ongoing AGRI reform to take over most activities from the Commission by means of outsourcing. Further efficiency gains would also be achieved by using EUIPO's appeal body (Boards of Appeal), thus eliminating a need to create a new structure in the EC to handle CI GI related appeals. There are clear synergies between CI GIs and TMs and Designs procedures also in view of the existing EUIPO's cooperation with .eu TLD registry on the alert-system for TMs and the registration of domain names.[190] Cost for EUIPO are put at EUR 17,000 (this includes cost for registration and management of EUR6,000 and cost of translation (machine + human verification) of files to all EU languages of EUR11,000). Additionally all costs would be covered by the current EUIPO budget with no new expenses for the EU budget.[191]

As regards the role of Competent Authority in the Lisbon system (see Annex 10: Competent authority, link with Lisbon system), the EUIPO currently has the same capacity in respect of two other international registration systems administered by WIPO: the Madrid system for trade marks and the Hague system for designs. Handling the interface with international systems requires familiarity with highly specific procedures and with the operation of WIPO's International Bureau and registries. EUIPO has the valuable asset of institutional knowledge in this regard.

The European Parliament in its resolution of 11 November 2021 called for the establishment of an efficient and transparent EU *sui generis* scheme, pointing to EUIPO as responsible entity for the registration of CI GIs in order to ensure their uniform

[187] Due to specialisation and standardisation of administrative activities such agencies are very cost efficient. For instance, cost analysis of Union Programmes 2014-2020 has shown that delegation of programme management to one agency was expected to bring savings of 26% relative to implementation by the Commission. Source: ICF GHK. 2013. Cost Benefit Analysis for the delegation of certain tasks regarding the implementation of Union Programmes 2014-2020 to the Executive Agencies (Final Report 19 August 2013), pages 63 and 135.
[188] See: GIview (tmdn.org).
[189] eAmbrosia is the Commission's legal GI register of the names of agricultural products and foodstuffs, wine, aromatised wine products and spirit drinks that are registered and protected across the EU.
[190] See Annex 10 for further information.
[191] With the total EUIPO budget at EUR534 million in 2021, the estimated cost of 30GIs registrations per year of EUR54,000 amounts just to around 0.01% of the EUIPO budget. Even taking into account higher estimations done by the EUIPO (annex 9, Option 1.3) with fixed annual cost of 12 FTE, the CI GI costs of EUIPO should amount to around 0.2-0.3% of the total EUIPO budget. EUIPO budgets available at: https://euipo.europa.eu/ohimportal/en/transparency-portal/economic/office-budget

examination and protection throughout the Union.[192] On the other hand, less than three-quarters of total respondents of the public consultation (i.e. 82) preferred the Commission to be in charge over an EU Agency. As further explained in Annex 9, there would be no registration fee at EU level applied by EUIPO or the Commission. **Due to higher efficiency, the EUIPO sub-option 2.3.B is preferred.**

*Co-existence of EU and national titles and regimes*: existing national GI titles could, on the one hand, be absorbed by the new EU framework (Option 2.5.A) or co-exist in parallel (Option 2.5.B). In both cases, GIs currently protected at national level would not lose protection and a new EU title would be created.

The first approach (Option 2.5.A) builds on the experience of the agricultural GI schemes which replaced national GI titles when the EU scheme was first put in place. Keeping a single EU regulatory framework throughout the Single Market for producers, would lighten the burden on Member States and administrative bodies. First, because they would not need to invest on national GI schemes but on the first-stage procedure, which is lighter as it does not require registration at national level. This is especially important for those Member State who do not have GI system already and prefer to keep the costs low. Second, there would be no need to create rules to avoid regulatory conflicts and overlaps between the EU and the national levels. Thirdly, the new EU regulatory framework, incorporating existing national GI titles, would be used for the purposes of granting international protection through the Lisbon route. For the purpose of absorption of existing around 40 national GIs by the EU scheme, the owners would have to express their interest to do so. Consequently, we have not treated their costs differently in cost calculations.

To make option 2.5.B operational and guarantee a successful co-existence between the new *sui generis* EU title and the current heterogeneous GI protection systems at national level, the latter should be harmonized. As there are two types of systems at national level (trade mark and *sui generis)* which are additionally quite different from one another, this would imply various degree of harmonisation depending on the level of similarity of the considered national system with the landing (EU) system.

A meaningful approximation of GI protection at national level would practically imply that certain Member States would have to establish a full new regulatory system for national GIs in addition to complying with the new EU sets of rules aiming to establish the EU GI title and system. Harmonisation might therefore create a disproportionate amount of regulatory and administrative burden for those Member States. In addition, harmonisation would also require continuous investment by all Member States to maintain convergence between national protection systems as the experience with the harmonised trade mark system has shown. The EUIPO estimates that an effort of a minimum of five full time equivalents (FTEs) are currently invested across the EU Intellectual Property Network (EUIPN) on a yearly basis in the maintenance of convergence of practices and keeping the stakeholders informed and engaged.

Having two parallel systems at EU and national levels might eventually carry the risk of confusing consumers and producers. Producers from certain Member States (that are not members to Lisbon already) might need to go through EU protection to get protection in a third country (see Annex 6). For further information on the interplay between existing

[192] European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU's recovery and resilience (2021/2007(INI)).

national systems /future EU system see Annex 11. **Due to relative simplicity, Option 2.5.A An EU title replacing existing national GI regimes is preferred.**

The vast majority (92%) of public authorities responding to the public consultations were supporting PO2 and only 4% were against it.

Consumers and Innovation: same assessment as in PO1.

Vast majority (86%) of EU citizens, NGOs and researchers who replied to the public consultations favoured PO2, while only 6% were against it.

Based on the analysis above and to allow comparison with other options, Option 2 consists of the following combination of the best performing sub-options: options 2.1.B (PGI protection), 2.2.A (two-stage system), 2.3.B (EUIPO), 2.4.B (streamlined control with a strong enforcement) and 2.5.A (EU title replacing national GIs)[193].

**Table 6.3.1.** Summary of cost of CI GI protection under PO2 (preferred combination of sub-options)

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 7 500 | 17 000 | 39 500 |
| Verification/Control* | 5 700 | 100 | 0 | 5 800 |
| Enforcement & management** | 3 000 | 3 900 | 0 | 6 900 |
| Total | 23 700 | 11 500 | 17 000 | 52 200 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.23 | 0.51 | 1.19 |
| Verification/Control* | 0.17 | 0 | 0 | 0.17 |
| Enforcement & management** | 0.09 | 0.12 | 0 | 0.21 |
| Total | 0.71 | 0.35 | 0.51 | 1.57 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 3, 4 and 13 for detailed calculations and assumptions

### 6.3. Option 3 - Trade mark reform

Producers

*Management*: In case of collective trade marks, the producers would have to form an association (a collective composed of members) in order to apply for an EU collective mark. Rules on associations are set by respective laws of Member States, cost of setting it up are marginal, and one of the members could be in charge of running it. The association would have to set the rules and standards for using the mark, product specifications, including limitation on territory. In order to use the mark a producer would have to become a member of the association.

In case of existing collective trade marks (such as Belgian Linen (BE) or Botticino Classico Marble (IT)), owners enjoy the freedom to manage their product specification as much as the producers group under the *sui generis* GI scheme. Furthermore, the case studies put forward in the study on enforcement[194] show that producer associations frequently endorse verification actions that go beyond the EUTMR (which does not require any product standards to be set as part of an EU collective mark), suggesting that the mere presence of the group encourages investment in quality standards.

[193] For comparison of cost of different combinations of sub-options of Option 2 please see annex 13. For impact of different combinations of sub-options on stakeholders and objectives see annex 14.
[194] VVA and AND International (2021), p. 46.

For certification marks, the owner of the mark has to be a third party not engaged in the supply of certified goods and service. As the owner is independent from the producers, its oversight corresponds to third party control under the *sui generis* GI option. In case of existing CI GI products this role is taken by a local authority or an association (see Table below). Eligibility criteria may include non-discrimination clauses meaning that if a producer complies with the criteria, the owner of the certification mark cannot deny the use of the mark. At least in the case of the four examples presented below, there is an open channel of communication between producers and owners.

**Table 6.3.1.** Examples of national certification marks for CGI products

| Mark | No of producers | Owner | Eligibility Criteria |
|---|---|---|---|
| Albacete Cutlery (ES) | 10 | Albacete Council | the whole process of production of the knife, from the tempering phase to the end, is done exclusively with original materials and in the city and province of Albacete |
| Artesanato dos Açores (PT) | 100 | Regional Centre for the Support of Handicraft | material, method of manufacture, quality, precision or other characteristics |
| Made in Toruń (PL) | 150 | Toruń Council | business services and products linked to Toruń city |
| Sámi Duodji (SE) | N/A | Saami Council | specific techniques and materials |

*Source:* VVA and AND International (2021), p. 43.

Currently at least five Member States (IE, IT, LV, LT, SE) charge for certification marks for GI protection. The fees are between EUR 150 and 340 (see Annex 8) – so between 10% and 23% of the EUIPO fees. Annualized cost of preparation of registration, EUIPO fees and renewal fees are estimated at EUR 7,650 per TM for GI annually.

As in the TM system, EU wide and national protection systems coexist, it would be up to the owners of these national certification marks to decide if they want to apply for EU wide protection, however according to today's EU legislation on EU certification marks, they cannot be used to certify the link between product qualities and the geographical origin (which could be changed but which would imply an opposite policy approach to the one followed so far by the EU).

*Control and enforcement* Owners of collective and certification marks have high flexibility regarding the definition of product characteristics and other eligibility criteria, the choice of verification, monitoring and enforcement tools. In case of national certification marks, controls vary between on-site controls (of the manufacturing process), product checks (sometimes based on photographs), checks of the origin of the materials used, self-assessment and even no verification. Frequency varies from only once upon application to yearly. In the case of small producer group, social control is an important factor that may partly replace formal verification. Very few cases of non-compliance were reported.

Costs depend on the scope of verification put in place. It can be low, if limited formal verification is performed, or up to EUR 6,000 as in PO1[195]. Furthermore, in cases when a local authority is the owner of a certification mark it could decide to bear the cost of controls, thus limiting the cost for producers.

[195] Cost depend on use of certifying bodies, can be up to EUR 20,000 / year for a single company when verification systems are complex for large-scale companies (VVA & AND International (2021), supra note, p. 73). It must be noted that the quoted study puts the same maximum cost for both trade mark and *sui generis* options in case of use of independent certifier.

*Enforcement* Under trade mark option enforcement is private, that is TM owner has to gather evidence and sue the potential infringer. The costs for light enforcement are limited (few euros for a registered letter, and few hundred euro for a registered letter written by a lawyer). The costs for strong enforcement may reach EUR 2,500-EUR 5,000 for a court case (maximum of EUR 30,000 in case of complex and long procedure)[196]. With majority of GI groups being micro producers (50% based on PGI) with no internal legal capacity, such cost may prove prohibitive and consequently render enforcement ineffective. This can disincentivise protection especially in light of the importance attached to it by producers as demonstrated in the problem section. Nevertheless as bulk of potential infringements can be solved with a letter[197], the cost of enforcement also for these options are set at EUR 3,000.

Among respondents to the public consultation, almost the same number of stakeholders (65) express their preference for a general system based on IP rights enforcement as for a specific GI enforcement system (58).

**Box 5. Monitoring the market under TM**

Marmo Botticino Classico (IT marble producers) reported the difficulties in systematically monitoring ex-ante the market, with costs outweighing the benefits of such an exercise. Mainly due to technical difficulties (including human and economic resources, both for online research and obtaining information offline), the geographical distances involved, and the small size of the consortium.

Conversely, the monitoring system for Plauener Spitze (DE lace) was deemed to be 'extremely effective' due to increased digitization and online sales which facilitates market monitoring, while off line monitoring remained difficult. [198]

Businesses responding to the public consultations were slightly against selecting this option (48% against, 41% in favour).

Public authorities

*Registration*: If local authorities engage as owners of e.g. certification mark, they would take all the responsibilities for registration, use by producers, quality control, link to the territory. They could charge fees (as they already do in five Member States). In case authorities do not want to engage as owners, their direct cost would be reduced to zero. Nevertheless, they could still support mark holders e.g. by organizing cooperation, supporting payment of EUIPO fees, or organizing national and international promotion campaigns. Such supportive action would however be voluntary and not connected to any obligations imposed by this option. At central Member States level, there would be no need to determine rules or designate national authorities for scrutiny, official controls, and to prevent or stop the unlawful use of geographical names.

One benefit of this option is that the trade mark system is already available at EU level through the EU Trade mark Regulation. The EUIPO is experienced with handling TM registrations. With around 177,000 TM applications[199] in 2020 an increase by 300 CI GI in ten years' time will be insignificant for both cost and revenues of the EUIPO. Also due

[196] VVA & AND International (2021), supra note, p. 135.
[197] See Box 7 below.
[198] VVA & AND International (2021), supra note, p.62.
[199] EUIPO "Annual activity report 2020" https://euipo.europa.eu/ohimportal/en/annual-report

to the fact that EUIPO TM fee revenues are twice as high as corresponding direct costs[200]. Nevertheless full fee of EUR 1,500 was attributed to EU cost to cover also fixed cost of the EUIPO.

The majority (58%) of public authorities responding to the public consultations were against selecting this option while around 21% were in favour.

Consumers

Amending Trade Mark Regulation to allow for CI GI protection will coexist with sui generis EU PGI/PDO schemes for agricultural, foodstuff and drinks that are available at EU level. Such approach would only add to fragmentation of GI protection in the EU. This could be detrimental to producers in their efforts to distinguish their products on the market on an equal playing field and, for example, benefiting from the use of PGI/PDO logos and the promotion of GIs schemes in general. It would be detrimental to the consumer who would continue to experience difficulties in understanding different approaches, thus undermining their (informed) decision at the point of purchase.

More than half (57%) of EU citizens, NGOs and researchers who replied to the public consultations were against PO3, while one fifth (20%) were in favour of it.

**Table 6.3.2.** Summary of cost of CI GI protection under PO3[201]

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 7 650 | 0 | 1 500 | 9 150 |
| Verification/Control* | 6 000 | 0 | 0 | 6 000 |
| Enforcement & management** | 3 000 | 0 | 0 | 3 000 |
| Total | 16 650 | 0 | 1 500 | 18 150 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.23 | 0.00 | 0.05 | 0.27 |
| Verification/Control* | 0.18 | 0.00 | 0.00 | 0.18 |
| Enforcement & management** | 0.09 | 0.00 | 0.00 | 0.09 |
| Total | 0.50 | 0.00 | 0.05 | 0.54 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 and 13 for detailed calculations and assumptions.

In addition to all the above considerations, two further points are also to be taken into account. First, the EU is generally perceived as the champion of the *sui generis* GI regime in the international arena including WTO and WIPO. Many countries embracing a *sui generis* regime have taken the EU as a reference model, in particular given the very successful outcomes on GIs in EU's bilateral negotiations. At multilateral level (TRIPS/WIPO) the EU has consistently promoted the extension of a high level of protection to all GIs, beyond wines and spirits. It may therefore appear rather inconsistent with this well-established approach to divert from such standards in the case of CI GIs protection by establishing a new EU scheme based on trade mark reform.

Second, while not in principle excluded, it would appear inconsistent for the EU to provide one kind of legislation (*sui generis* protection) for agricultural GIs and another kind (trade mark protection) for CI GIs.

[200] EUIPO forecast for 2021-25 budget: direct expenditures for TM account for around 52% of fee revenues. Source: EUIPO.

[201] See Annex 13 on Cost estimations.

### 6.4. Shared impacts

All three policy options assessed above are going to contribute to solving higher level objectives and problems as described in Section 2. They provide a single registration point at the EU level and uniform protection that will enable producers to protect and signal quality of their products due to geographical origin in the internal market. Such protection should unlock the potential for additional sales, contributing to the increased profitability and attractiveness of the craft professions that often belongs to the EU cultural heritage. The shared impacts on employment, innovation, competition and environment are as follows.

Employment

The Cost of Non-Europe Report[202] estimates that between 284,000 and 338,000 new jobs (between 14,200 and 16,900 annually) would be created in the EU over the period of 20 years. Employment in craft sector is strongly declining, hence, this initiative may reverse this trend. Furthermore, CI producers will benefit from the overall expected increase in a range between 4.9 and 6.6% in intra-EU trade in these goods over the same period.[203] Such opportunities for commercial development in addition may create conditions for the development of sustainable tourism offers and economic diversification of regions highly dependent on tourism. Around 75% of respondents to the consultations anticipated positive impact of CI GI system on employment[204].

Innovation

A GI is a distinctive sign used to identify a product whose quality, reputation or other such characteristics relate to its geographical origin. These characteristics are not observable. As GI label restore this information to consumers, it gives producers more incentive to produce high-quality products.[205] Furthermore, evolution of consumer preferences (c.f. Section 2.2) will require product upgrades (e.g. Box 8). Case studies for agricultural products in IT, DE and BE demonstrate that product characteristics protected by geographical indications do not remain static but evolve both with regard to the production and to the marketing.[206] Nevertheless, it is important to underline that, having control over the product specification, group of producers have the power to stimulate or stifle innovation.[207] Around half of respondents to consultations expected positive impacts on innovation with one in ten having the opposite view. [208]

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[202] European Parliament (2019), supra note.

[203] See also: Raimondi, V., Falco, C., Curzi, D., & Olper, A. (2020). Trade effects of geographical indication policy: The EU case. *Journal of Agricultural Economics*, *71*(2), 330-356 who study the impact on food geographical indication policy on trade margins.

[204] 43% in case of respondents from Member States without national CI GI system (see Annex 2a).

[205] Akerlof, G. A. (1978). The market for "lemons": Quality uncertainty and the market mechanism. In *Uncertainty in economics* (pp. 235-251).

[206] Gocci, A., Luetge, C., & Vakoufaris, H. (2020). Between Tradition and Sustainable Innovation: Empirical Evidence for the Role of Geographical Indications. *International Business Research*, 13(9), 101-101.

[207] On the one hand, very stringent product specifications and quality standards might have the potential to stifle innovation as producer might be reluctant to experiment with non-traditional designs or production methods if this could cause them to lose out on the protection and reputation provided by geographical indications. (VVA *et al.* (2020), supra note, p. 75). On the other, producers can cooperate in upgrading quality or in updating product specifications (VVA *et al.* (2020), supra note, p. 29). In addition some

**Box 8.** Example of innovation in CI GI

There are two lace making societies in Rauma (Finland), one focusing on preserving the traditional methods and styles, and the other focusing on innovative and artistic uses of lace and lace materials. However, also the latter emphasises the importance of the tradition as the basis of innovation and art, and more recently the former has been more open to occasionally using non-traditional colours and creating new kinds of decorative pieces on request.

Bolesławiec Pottery (PL): innovation in functionality - ceramics are now suitable for use in dishwashers and cookers.

Donegal tweed (IE) weaving developed from handwoven to power looms.

Connemara marble (IE) is designed by 3D design modelling [209]

Competition

CI GIs are upmarket products. They are based on tradition, convey information about their geographical origin, and address specific demand of consumers who attach value to such specific qualities (e.g. manual manufacturing techniques). Accordingly, even if market rivalry would be muted if a previously non-GI product turns GI, the resulting quality signalling effects of the CI GI title lifts consumer willingness to pay. This is indeed the case as the willingness to pay for an 'authentic' CI product increases with its value (see Section 2.2). And thus with the GI protection, consumer surplus is unlikely to be affected.

Furthermore, the number of CI products eligible for GIs protection is rather limited, and close non-GI covered functional substitutes are abundant. Also, competing producers are able to enter and produce CI GI covered substitutes, if only they fulfil the relevant criteria. And there is no legal limit to how many firms might produce GI products. For these reasons, market power is very unlikely to be created or enhanced by the initiative in question.

Around 80% of all respondents as well as business respondents to the public consultations considered that CI GI should have positive impacts on both competition and competitiveness of producers. Only respondents from Member States without national CI GI system and around 5% of all respondents had opposing views.

Finally, all conduct within the framework of GIs is subject to EU competition law.

Environment

As regards impact on the environment, the scale of production generated by the handful of CI GI products is likely limited. Second, CI GI generates a more durable good compared to cheaper non-CI GI mass production alternatives and is more likely to be

scholars stresses the importance of adequate public oversight in order to ensure the product improvements, e.g. Moerland, A. (2019). Geographical indications and innovation: what is the connection? In *The Innovation Society and Intellectual Property*. Edward Elgar Publishing., p. 33.

[208] Respondents from Member States without national CI GI system were split on this point with 40% expecting positive impact and 40% negative (see Annex 2a).

[209] Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU, VVA at al 2020).

produced in the EU (hence reduced transport).[210] Third, consumers who express preference of such credence goods are likely to be the environmentally cautious ones and thus quite likely expect CI GI producers to join them in environmental virtue signalling (see Section 2.2). For all those reasons, the environmental effect – however small – is likely to be positive. Such positive impact is also expected by almost 60% of the respondents to the public consultations.

## 7. HOW DO THE OPTIONS COMPARE?

The following tables provides information comparing the policy options in the light of the effectiveness and efficiency criteria as well as impact on most affected stakeholders.

### 7.1 Comparison of impacts

**Table 7.1** Comparison of policy options against effectiveness and efficiency criteria

| Option | Effectiveness (contribution to achieving objectives) | | | | Efficiency (costs and benefits) |
|---|---|---|---|---|---|
| | Applicant friendly and affordable registration system | Effective and affordable system of: | | Low cost for public authorities | |
| | | control | enforcement | | |
| **Baseline** | **0** | 0 | 0 | 0 | **0** |
| **Option 1** Modified Agri system | (++) Registration at no or low cost with local authorities who provide additional support to producers (form filling, collaboration building) | (+) Strict control based on third party assessment high benefit to customers | (++)Authorities enforce out of their own initiative, high benefit to producers | (--) High cost of both control and enforcement system | **Net effect: (++)** High cost and high benefits, esp. as regards quality control and assurance, and enforcement. Use of recognised PGI logo. Authorities bear bulk of cost<br><br>**Cost:** EUR1.95m for 30 GI, 37% of costs borne by producers |
| **Option 2** New system | 2.2A (++) as in PO1 | 2.4B (++) new approach control based on self declaration and random controls; low cost, comparable effectiveness to PO1 | (++) authorities enforce out of their own initiative, high benefit to producers | (+) lower cost of control due to random checks, (-) additional costs for MSs that do not have and (0) no costs for MS that have *sui generis* GI system in place; 2.3B (0) more efficient EUIPO registration and management | **Net effect: (++)**<br>**Benefit:** middle option. More engagement of authorities in quality control and enforcement. Possibility to use voluntarily PGI logo. Authorities bear 55% of costs<br>**Cost**: EUR 1.57m for 30 GI. Producers bear 45% of costs |
| **Option 3** Modified TM system | (+) Registration at EUIPO, potential problems for micro producers if local authorities do not engage | (0,+) private self governed control system, potential for use external certifiers | (-) private enforcement with high cost on producers | (++) No cost on public authorities, EUIPO profit from additional registrations | **Net effect: (++)**<br>**Benefit:** low cost option with private control and enforcement. Need for private logo. Most cost born by producers<br>**Cost**: EUR 0.54m for 30 GI, 92% of cost borne by producers |

Legend: ++ significant positive impact; + positive impact; **0** neutral; **-** negative impact; **--** significant negative impact;

[210] For instance, since 2019, three manufacturing criteria must be respected when producing slippers Charentaise de Charente-Périgord (FR): production in Charente or Périgord, use of the sew-and-turn technique, without any glue, and a wool felt sole of French origin. Source: Le Monde (3/12/2021). "*Tout le monde n'aura pas sa charentaise sous le sapin*".

**Table 7.2** Comparison of the impact of viable policy options on stakeholders

| | CI Producers group* | National administration | EU administration | Citizens |
|---|---|---|---|---|
| **Baseline** | 0 | 0 | 0 | 0 |
| **Option 1** Modified Agri system | (++) same system as for Agri GI (one stop shop); producers in 16 MS already familiar with system. Public enforcement lowers burden Use existing reputation of Agri GI system | (--) Costly enforcement system, additional reporting obligations Could be exacerbated by expected influx of foreign registrations (+) experience with the current system; Opportunity for mobilising local community, accelerating growth and turism | (0,-) additional cost both at agency and at Commission to grant around 30 GI per year; Single system for both Agri and CI GIs | (++) quality assured by already recognizable system and logos; Important for those placing value on local production and heritage |
| **Costs per GI:** | EUR 24,000 per producer group with 60% directed to preparation of registration files | EUR 12,000 with 60% directed to registration; Difficult enforcement for some GIs (e.g. monitoring PL lace counterfiting by PT authorities) | EUR 29,000 with 70% directed towards registration; Cost at EUIPO not covered by any fees + cost of final decision at Commission level | (-) Potentially higher prices by up to 20%-50% of CI protected products |
| **Benefits:** | Potential for higher prices by up to 20%-50% and higher demand by 20-30% or even 100%[211]; cheap enforcement as mostly by public authorities; | High support to local producers; could result in strong growth of niche markets + promotion of region | Use of existing expertise of EUIPO and Commission | (++) Assured quality and local origin (unquantifiable) |
| **Option 2** New system | Borrowed reputation of Agri GI system, voluntary use of PGI logo; producers in 16 MS already familiar with system. Public enforcement lowers burden | (0/-) Limited aditional reporting obligations (+)Opportunity for mobilising local community, accelerate growth and turism 2.2 A (+) local authroties involved as in PO1 but more streamlined due to no COM just EUIPO; 2.4 B (-) Control system based on self-declaration and random checks limits costs; | 2.3 B – outsourcing to EUIPO most efficient - self-financing option | (++) quality assured by system similar to Agri, voluntary use of the same logos as in Agri; Important for those placing value on local production and heritage |
| **Costs per GI:** | EUR 23,700 | EUR 11,500 | EUR 17,000 | (-) Potentially higher prices by up to 20%-50% of CI protected products |
| **Benefits:** | Potential for higher prices by up to 20%-50% and higher demand by 20-30%; or even 100% free enforcement by public authorities; | High support to local producers; with lower enforcement cost (2.4B) could result in strong growth of niche markets + promotion of region | Use of existing expertise of EUIPO (2.3B), | (++) Assured quality and local origin (unquantifiable) |

[211] In the agricultural sector, 'The sales value of GI products was on average (weighted) 2.07 times higher than the sales value for comparable standard products without a GI label.' see 2019 Study on economic value of EU quality schemes, geographical indications (GIs) and traditional specialities guaranteed (TSGs) Final Report p.102 available under KF0419562ENN.en.pdf.

| | CI Producers group* | National administration | EU administration | Citizens |
|---|---|---|---|---|
| **Option 3** Modified TM system | (+) Use of established TM system, familiar to producers in 9 MS for GI protection and already used for half of protected GIs, system used by main trading partners in US and UK; (-) costly registration and enforcement for small producers; uncertain support from authorities; cost of building brand awareness as PGI logo not available | (0) No legal obligation for authorities to engage in activities connected with cooperation building or promotion campaigns of local producers; | (0, +) Reuse of existing system with existing EUIPO procedures; Additional registration expected to marginally increase EUIPO budget surplus | (++) quality assured by trust in private brands; Important for those placing value on local production and heritage |
| **Costs per GI:** | EUR 16,650 per producer group, with 46% directed to registration | EUR 0 | EUR 1,500 - Marginal cost at EUIPO to handle additional applications | (-) Potentially higher prices by up to 20%-50% of CI protected products |
| **Benefits:** | Potential for higher prices by up to 20%-50% and higher demand by 20-30% or even 100%; free enforcement by public authorities; | No cost for authorites stemming from legal obligations | Revenues from registration higher than direct costs | (++) Assured quality and local origin (unquantifiable) |

*Assumption that there are 10 producers per producer group

Legend: ++ significant positive impact; + positive impact; **0** neutral; **-** negative impact; **--** significant negative impact;

### 7.2 Coherence

This part assesses coherence of each considered option with other EU policy objectives, including the Charter for fundamental rights, and with other policy initiatives and instruments.

The three options (PO 1, 2 and 3) have an acceptable level of coherence with the other EU policy objectives and with other policy initiatives and instruments.

In relation to other EU policy objectives, the three options are coherent with the principle of **free movement of goods** and with the **right to property** enshrined in the Charter for Fundamental Rights of the EU. More broadly, the **IP Action Plan** of 2020 foresees the possibility of creating an EU level IP protection for CI GI products as part of the **Industrial Strategy and the recovery strategy** of the EU. A harmonized IP system for CI products under either of the three options (PO1, PO2 or PO3) could be beneficial for the **EU economy**, as it could help producers stay competitive.

However, through the development of product specifications, PO1 and PO2 would particularly rank high in helping artisans and producers to work together in niche markets, fostering cooperation, and **promoting and protecting traditional know-how and innovation, at EU level,** in coherence with and respect of **EU competition rules.**

PO1 and PO2 benefit not only the producers, but also the related **ecosystems**, such as **tourism**, as **GIs raise the visibility of the product and the region**. With tourism being a sector particularly hard-hit by the COVID-19 pandemic, PO1 and PO2 can prove to be an important step in putting these regions, often underdeveloped, back on track towards **economic recovery** and help improve **attractiveness of EU regions** for tourism. Moreover, this will impact the regional economy and **jobs**, by fostering economic activity and employment in these, often **underdeveloped regions**. PO1 and PO2 can therefore prove to be a vital part in facilitating recovery in hard-hit EU regions.

In addition, the three options rank high on coherence with the EU gender equality promotion.

However, there are important differences between PO 1 and 2 on the one hand and PO 3 on the other when it comes to coherence with the **EU Trade mark policy and the international EU Policy on GIs.** PO1 and 2 score positively on all criteria and are in particular coherent with the Geneva Act of the Lisbon Agreement, whereas PO3 ranks lower also in relation to the EU Trade Mark policy (See Table 7.3 in Annex 12).

Under **PO 1 and 2**, producers will fully benefit from the **EU accession to the Lisbon** system granting protection to EU companies in third countries and third country companies in the EU. Moreover, producers could benefit from additional protection in third country markets through EU international trade agreements. Both Options are also fully coherent with the **EU Trade Mark policy**. Often, producers and industries combine different instruments, both collective and individual ones. Some producers might combine an individual trade mark of their brand with a collective trade mark, or if available, *sui generis* GI protection. Concretely, a producer might e.g. consider that a trade marks is a good option to start in promoting awareness and also pave the way for the later GI by having that designation already protected quickly as a mark.[212]

However, **under PO3**, to meet the obligations resulting from international treaties, notably the **Geneva Act,** it would require modifications affecting the overall **coherence of the EU Trade mark Regulation**[213]. For example, by requiring that a GI TM could become generic[214] and that it would also protect against evocation.[215] (see the overview of the differences between *sui generis* GIs and trade marks in Annex 7). Hence, PO3 is ranking low in coherence with the EU Trade Mark policy.

Moreover, **PO3** also ranks low on coherence with the **EU international GI protection** policy. First, under PO3, CIs products would not cater for enhanced protection in third country markets by means of their specific inclusion in EU bilateral trade agreements under the GI provisions. Second, PO3 would create two different protection systems at international level: one for agricultural GIs (*sui generis* protection) and another for CI products (EU TM protection). This would appear inconsistent with the EU's leading role in the international arena, particularly in the context of the Geneva Act - where all members support GI *sui generis* protection - in promoting the *sui generis* GI regime and advocating for the highest possible level of protection for all GI products.

Finally, when comparing coherence with the existing **EU rules protecting *sui generis* GIs for agricultural products,** while PO2 and PO3 rank high, PO1 appears less coherent. This is mainly for two reasons, first, under PO1, CI products would risk being

[212] Cf. VVA *et al* (2020), p. 76.

[213] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark EUR-Lex - 32017R1001 - EN - EUR-Lex (europa.eu).

[214] In the context of **geographical indications**, **generic terms** are names which, although they denote the place from where a product originates, have become the term customary for such a product. An example of a GI that has become a **generic term** is Camembert for cheese.

[215] The notion of '**evocation'** extends to the case in which the term used to designate a product like 'feta like cheese', incorporates a part of the GI (in this case 'Feta') so that consumers are led to have in mind, as a reference image, the products protected under this GI. Article 11(2) of the Geneva Act extends protection in particular "to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as "style", "kind", "type", "make", "imitation", "method", "as produced in", "like", "similar" or the like".

marginalised among schemes focused on agricultural products and within an administration used to dealing with agricultural matters, under the Common Agricultural Policy and the rural development. And secondly, CI products would require to amend the existing Quality Control Regulation and procedures (which are specifically designed for agricultural products) in order to cover CIs and take into account their characteristics.

### 7.3 Compliance with the proportionality principle

**All options (PO1, PO2 and PO3) are basically proportioned.** None of them go beyond what is necessary to achieve the identified problems/objectives. Their respective scope is limited to those aspects that Member States cannot achieve satisfactory on their own and where the Union can do better.

As far as the instruments of their implementation are concerned (e.g. self-standing EU Regulation in case of PO2) all options are justified with view to the fragmented national regulatory framework and the necessity of having a single title due to international obligations.

PO2 has additional advantages in comparison to PO1 by making the system less burdensome. These include the possibility for direct application to the EUIPO or use of infrastructure of another Member State for the countries that do not want to set up a national GI examination system. Self-certification and random controls should lower the application and verification costs as well. Finally national reporting obligation every four years instead of annually (PO1).

PO3 would be the most proportionate towards Member State as no new obligations would be created. It scores, however, lower in terms of support to micro/artisanal producers (no assistance from authorities in application or enforcement). It may also be problematic to implement due to required changes in the existing trade mark legislation.

## 8. PREFERRED OPTION

Based on the assessment and comparison of sub-options and their impacts, the preferred policy option is **PO2: Self-standing EU Regulation.** The overall preferred option package is a combination of sub-options 2.1.B (PGI protection), 2.2.A (two-stage system), 2.3.B (EUIPO), 2.4.B (streamlined control with a strong enforcement) and 2.5.A (EU title replacing national GIs). This package of measures is the best performing (including in terms of effectiveness and proportionality), with all the different sub-options being coherent together: the different sub-options are all either independent of each other, or strengthen each other.

Under the preferred option all EU producers can obtain EU-wide GI protection for CI products. Such protection encourages producers' cooperation, strengthens local supply, creates niche markets, and encourages producers' cooperation with local authorities. As within the GI system for agricultural products, producers can advertise the protected GI by a voluntary use of logo on the product labelling. The preferred policy option protects geographically rooted products in the interest of the wider public, making the best out of local expertise and heritage, involving public authorities in product quality control while allowing producers to self-declare conformity, and stimulating activities like tourism, in particular in rural or less developed regions (very relevant in particular in the COVID-19 aftermath).

Consumers, who are often willing to pay a premium for protected GI products, are better informed.

At international level, the preferred option enables EU producers to seek international protection for their CI products available in other parties to the Geneva Act, and enables third countries or organisations parties to the Geneva Act to obtain GI protection for their CI products in the entire EU territory. It also allows for increased protection for EU CI producers in third markets such as China and India, through robust GI provisions in bilateral trade agreements concluded by the EU.

The preferred option further contributes to defend the EU's leading role in the international arena in promoting the *sui generis* GI system and the highest possible level of protection for all GI products.

Finally, the preferred option is aligned with the outcome of the public consultation as well as with the preferred policy approach expressed by the nine Member States in the said joint-non paper and more recently by the European Parliament. The preferred option is also respectful and coherent with the existing agricultural GI schemes.

The table below summarises estimated average costs of the preferred option.

**Table 8.1.** Summary of costs of the preferred option

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 7 500 | 17 000 | 39 500 |
| Verification/Control* | 5 700 | 100 | 0 | 5 800 |
| Enforcement & management** | 3 000 | 3 900 | 0 | 6 900 |
| Total | 23 700 | 11 500 | 17 000 | 52 200 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.23 | 0.51 | 1.19 |
| Verification/Control* | 0.17 | 0 | 0 | 0.17 |
| Enforcement & management** | 0.09 | 0.12 | 0 | 0.21 |
| Total | 0.71 | 0.35 | 0.51 | 1.57 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p. 160, producer group assumed to compose of 10 members. See Annexes 3, 4 and 13 for detailed calculations and assumptions.

## 9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

This initiative will be evaluated after five years from entry into force. Commission will assess whether the specific objectives of the new system are met.

The table below lists monitoring indicators. They should allow for assessment of the performance of the new CI GI system.

| Operational objectives | Monitoring indicators | Data source |
|---|---|---|
| Applicant friendly and affordable registration system | Total number of EU GI registration;<br>Time to register;<br>Cost of registration at national and EU level in case of two-step procedure (including direct cost by producers group as well as any subsidies by national authorities/EU funds);<br>Characteristics of producer groups including: number of firms/craftsman and their size, whether they had registered trademark or *sui generis* GI prior to | eAmbrosia/TM GIview;<br>Reports from Members States (every 4 years);<br>Survey (producers) |

| | | |
|---|---|---|
| | registering in the new system;<br>Feedback should also be gathered from owners of the products that would qualify for protection under the new system but who did not apply for it; | |
| Effective and affordable system of control and enforcement | Number and origin of the potential infringing products that they observe on the market;<br>Changes to the number of CI GI marked products sold on the market and their average price;<br>Changes to the value and share of exports of the GI protected products;<br>Cost of control and enforcement procedure (including direct cost by producers group; direct cost by public authorities as well as any subsidies by national authorities/EU funds); | Reports from Members States (every 4 years);<br>Survey or case studies (producers + national authorities) |
| Low cost for public authorities | Cost of registration, monitoring and enforcement | Survey (national and EU authorities) |

## ANNEX 1: PROCEDURAL INFORMATION

### 1. Lead DG, Decide Planning/CWP references

Lead DG

– DG European Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (GROW)

Co-Responsible DG:

– AGRI

Other services involved:

– SG, SJ, BUDG, CLIMA, CNECT, COMP, ENV, JRC, JUST, REGIO, OLAF, SANTE, TAXUD, TRADE

EU agency involved:

- EUIPO

Agenda Planning references:

– Ref. PLAN/2020/9272

– The initiative is included in the Intellectual Property (IP) Action Plan, that the Commission adopted on 25 November 2020

### 2. Organisation and timing

The **inception impact assessment** was published on 30 November 2020. It was followed by a feedback period that lasted until 18 January 2021. 70 stakeholders submitted feedback.

The Commission held a **public consultation** from 29 April to 22 July 2021. This consultation was available on the Better Regulation Portal of the Commission and open to anyone who wished to reply. The public consultation received 182 replies through the EU survey.

The work on the **Impact Assessment** was carried out from January 2021 to November 2021, during which an Interservices Group (ISG) met five times to give an update on the ongoing work and discuss preliminary versions of the Impact assessment report, together with all the supporting documents.

The following DGs (Directorates General) have been invited to contribute to this impact assessment: SG (Secretariat-General), COMP (Competition), ENV (Environment), CNECT (Communications Networks, Content and Technology), JRC (Joint Research Centre), JUST (Justice and Consumers), SJ (Legal Service), OLAF (European Anti-Fraud Office), TAXUD (Taxation and Customs Union), REGIO (Regional and Urban Policy), TRADE (Trade), BUDG (Budget), CLIMA (Climate Action), SANTE (Health and Food Safety). The EUIPO also participated in the ISSG.

### 3. Consultation of the RSB

The Regulatory Scrutiny Board was consulted in an upfront meeting on 7 May 2021. The present impact assessment report was submitted to the RSB on 19 November 2021. The

Impact Assessment was discussed with the RSB on 15 December 2021. Based on the RSB recommendations, the Impact Assessment has been revised in accordance with the following points:

| ***Board's recommendation*** | ***how the IA report has been modified in response*** |
|---|---|
| (1) The report should clarify the degree of discretion the EU has to comply with the Geneva Act of the Lisbon Agreement. It should better explain what constitutes 'crafts and industrial products' and how the boundaries of application will be determined. | It is now clearly stated that EU has to introduce protection for CI GI to meet its international obligations.<br>Additional analysis on limitations to scope of GI protection was added to Chapter 6.2. |
| (2) The report should allow a more transparent assessment of the strengths and weaknesses as well as costs and benefits of the options with a view to bring out more clearly the available substantive policy choices. As option 5 (self-standing EU Regulation) builds on many elements of option 3 (extending the existing GI system), the sequencing of the options should be improved by presenting it directly after option 3 with option 4 (reform of the trade mark system) presented last. As option 5 presents a set of alternative sub-options, the report should identify the most relevant and best performing combination of suboptions upfront and subsequently compare them along all other options. | The order of options has been changed<br>Analysis in Chapter 6 of the option on Self-standing EU Regulation (now Option 2) ends with identification of the best performing combination of suboptions. Annex 14 was added to summarize impacts of suboptions of Option 2. |
| (3) Building on a better comparison of the options, the choice of the preferred option should be better argued, also considering the substantial equivalence between the estimated costs for option 3 and option 5. Taking into account that the envisaged eligible craft and industry GIs are rather limited, the proportionality assessment of the preferred option should be strengthened. As to option 4, the report should better assess how realistic it is to<br>reform trade mark law in order to include GI features. | The proportionality of the preferred option PO2 is now better explained in section 7.3, also presenting differences to PO1.<br>The difficulties in conducting trade mark reform where further highlighted. |
| (4) Even in the absence of empirical evidence, the potential impacts of the various options on competition, innovation and the environment should be better analysed and explained. | - impacts on innovation and competition are further developed. Examples of innovation in CI GI products are added to Chapter 6.<br>- although environmental impacts are rather limited, a short paragraph was added to Chapter 6. |
| (5) The report should clarify its position on the use of a mandatory or a voluntary protected geographical indication (PGI) logo, in view of the fact that consumer awareness of the PGI logo for agricultural products is low. | - The report is now consistently referring to the voluntary use of logo. The rationale for voluntary use is also added. |
| (6) The monitoring and in particular evaluation arrangements are missing in the report and need to be clearly established. | Timing of the propose evaluation was added.<br>Monitoring indicators were updated |
| Technical comments | - Views by stakeholder categories were added, opposing views of stakeholders were analysed in Annex 2a |

**4. Evidence, sources and quality**

The impact assessment uses the following main evidence:

- The Inception Impact Assessment of an EU-wide system for protecting the geographical indications of non-agricultural products that the Commission published on 30 November 2020.
- The studies carried out on behalf of the Commission on:
  - Geographical indication protection for non-agricultural products in the Internal Market published in 2013.
  - The economic aspects of GI protection at EU level for non-agricultural products published in February 2020.
  - Control and enforcement rules for GI protection for non-agricultural products in the EU published in August 2021.
- The public consultation on
  - a possible extension of geographical indication protection of the EU to non-agricultural products that ran from July to October 2014 (as part of the 2017 intellectual property rights strategy).
  - EU-wide protection of geographical indications for non-agricultural products that ran from 29 April 2021 to 22 July 2021 (in the framework of the impact assessment)
- Information received from the stakeholders in the framework of targeted consultations and workshops (see Annex 2).
- DG AGRI/EUIPO Conference on Strengthening geographical indications (25-26 November 2020), in particular its 25 Nov. Panel on geographical indication protection for non-agricultural products.
- Two main documents from the agricultural area (DG AGRI):
  - Evaluation support study on Geographical Indications and Traditional Specialities Guaranteed protected in the EU, 2020.
  - Study on economic value of EU quality schemes, geographical indications (GIs) and traditional specialties guaranteed (TSGs), AND-I for DG AGRI, 2019: this study provides economic data on GIs/TSGs at EU level and in Member States.
- The following other studies:
  - Study on Protection and Control of Geographical Indications for Agricultural products in the EU, EUIPO (2017)
  - Geographical indications for non-agricultural products. Cost of non-Europe report, Study by European Parliamentary Research Service (EPRS), The European Parliament (2019).

# ANNEX 2: STAKEHOLDER CONSULTATION

## 1. Introduction

The Commission announced in its communication of 25 November 2020 entitled 'Making the most of the EU's innovative potential – An intellectual property action plan to support the EU's recovery and resilience' that as part of the overall reform of the GI system, the Commission will, on the basis of a thorough impact assessment of its potential costs and benefits, consider the feasibility of creating an efficient and transparent EU GI protection system for non-agricultural products. Hence, the Commission has put in place a vast consultation strategy gathering the views of all relevant stakeholders. Consultations started already in 2013 and have intensified in 2020 and 2021. Stakeholders have been asked to express their views in particular on:

- The existing fragmented legal protection within the internal market of geographical indications related to authentic geographically-rooted craft and industrial (CI) products; the importance of the problem identified (subsidiarity, EU/internal market, as well as international and trade-related dimensions);
- The available policy options and their impacts (in particular on economy, competitiveness including prices and demand, capacity to export, innovation, free-riding, jobs, environment, consumer's information, regions, public authorities); and
- The benefits and risks of the EU acting.

In developing the stakeholder engagement strategy, the stakeholder mapping included:

- Public authorities (federal/national, regional and local authorities in Member States and non-EU countries) including intellectual property (IP) offices;
- Consumers (citizens and consumer organisations);
- Producers (individuals, enterprises in particular SMEs, and associations or organisations);
- Legal practitioners and academics;
- Other stakeholders e.g. training organisations.

From a geographical point of view, the consultation strategy covered the EU-28 and after BREXIT, the EU-27.

The consultation included a series of broad and targeted consultations, in particular:

- Public consultations;
- Face to face interviews, with selected stakeholders among those consulted through the public consultation most concerned by the initiative (in the framework of the study on controlling and enforcement rules for geographical indications (GIs) for non-agricultural products);
- Workshops organised with the contractor to share the results of the study on controlling and enforcement rules for GIs for non-agricultural products with stakeholders;

- A targeted meeting with the Member States (so called 'GIPP meeting'), followed by a targeted written consultation with IP offices of Member States on the basis of two targeted Questionnaires.

**2. Consultation activities prior to 2021**

Within the framework of an external study run in 2013, a **survey** was conducted on stakeholders' needs and expectations with regard to a possible legal protection of indications of authentic geographically-rooted products at the EU level. The survey led to a conclusion that existing legal instruments available for producers are insufficient at an internal market scale. A large majority of the respondents considered that legal protection at EU level could help producers communicate on the products, while some producers added that it could help eliminate unfair competition. In addition, many stakeholders attending the subsequent public hearing supported the study's call for better protection of the indications used for authentic geographically-rooted products at EU level. The results of the survey were presented on 22 April 2013 at a **public hearing**.

The **public consultation** organised in 2014 led to 136 responses from stakeholders in 27 countries: producers were best represented (60%), followed by EU Member States authorities (27%), lawyers and academics (8%) and consumers (6%). A large majority of respondents identified tangible benefits in economic, consumer protection and cultural terms from a strong protection system of indications for authentic geographically rooted CI products at EU level and saw therefore a need for action at EU level. A broad majority believed that only a system based on registered specific (*sui generis*) IP rights could provide the necessary legal certainty and ensure effective enforcement of rights, and that any new system should take into account the experience gained with the existing EU "geographical indication" system for agricultural products, while seeking improvements where appropriate. Stakeholders attending the subsequent public conference broadly confirmed these results in discussions. The results of the public consultation were presented at a **public conference** on 19 January 2015 and published in June 2015.

In October 2016, a **workshop** on the "contribution of non-agricultural geographically rooted products to regional inclusive economic development" was organised in the framework of the European Week of Regions and Cities 2016. Panellists and participants confirmed that CI geographically rooted products using geographical indications have a strong potential to boost economic development in particular for the benefit of SME and micro structures in weak and remote areas, not least via strong synergies with other economic activities like tourism.

On 18 November 2019, a **workshop** presented the results of the "Study on Economic aspects of geographical indication protection for non-agricultural products at EU level" to more than 80 participants including producers/consumer associations, national/regional/local authorities, and academics.

On 25 November 2020, a Panel in the framework of the **online conference** organised by DG AGRI and EUIPO on Strengthening Geographical Indications gathered the views of more than 130 participants on possible approaches to EU protection for CI GIs.

**3. Inception Impact Assessment feedback**

Stakeholders provided feedback about the Commission's intention of assessing the impact of an EU-wide initiative on geographical indications for CI products. Initially this impact assessment was open for feedback for 4 weeks (30 November 2020 – 28 December 2020). However, following requests from stakeholders, the feedback period

was extended for a total of 7 weeks (30 November 2020 – 18 January 2021). The Commission received 70 submissions originating from 14 Member States and 2 non-EU countries (CH, US). Participants were 37 business associations, 15 public authorities (including 8 regional/local authorities), 9 companies, 3 non-governmental organisations, 2 individual EU citizens, 2 other stakeholders as well as 1 academic/research institution.

Overall, there was broad support for an EU initiative establishing a protection regime for GIs for CI products. Among the stakeholders in favour of an EU initiative, most preferred a specific (*sui generis*) protection system. Several stakeholders, however, took the view that GI protection of CI products could be achieved by developing trade mark legislation, more specifically on collective or certification marks. In particular, such an approach would be cost-effective, as the costs would be borne by the individual beneficiary of the protection.

Several producers of geographically rooted products underlined that the regulatory fragmentation made the protection and enforcement of their rights in the internal market difficult and costly. Producers complained about having to take various approaches to protect their rights in different countries, resulting in substantive legal uncertainty and significant barriers for producers.

Several contributors pointed to positive impacts of creating EU-level protection for SMEs (greater visibility among consumers, protecting crafts with the risk of disappearing, collective structuring of production and marketing processes); regional economies and jobs (particularly in rural and underdeveloped regions, helping re-localisation of European industries); and consumer choice (boosted consumer confidence in the authenticity and quality of protected products, increased knowledge as to origin and production). At the same time, several stakeholders voiced concerns that a new EU GI scheme would lead to more costs and inefficiencies.

### 4. Workshop relating to the 2021 Study

On 13 July 2021, a workshop presented and discussed the preliminary findings of the "Study on Control and Enforcement Rules for geographical indication (GI) protection for non-agricultural products in the EU". Panellists and participants confirmed that the landscape and needs were very diverse, ranging from producers' needs for protection to authorities' needs (both national IP authorities in a supervisory function and local / regional authorities, who are often involved from the perspective of the products being rooted culturally and historically in the region) to the needs of consumers. In cases where infringing products are not seen as a particular issue, public involvement in the monitoring and enforcement processes may not be seen as necessary. Equally, the stronger the value we see in protecting such products from a cultural and historical point of view, the more interest there may be in models where public involvement is stronger. GI systems will always be more costly than trade mark-based systems due to a greater role being needed from public authorities, yet these need to be we weighed against the positive impacts. Costs might also fall naturally over time once a strong protection is in place that will deter infringing producers, thereby reducing infringements.

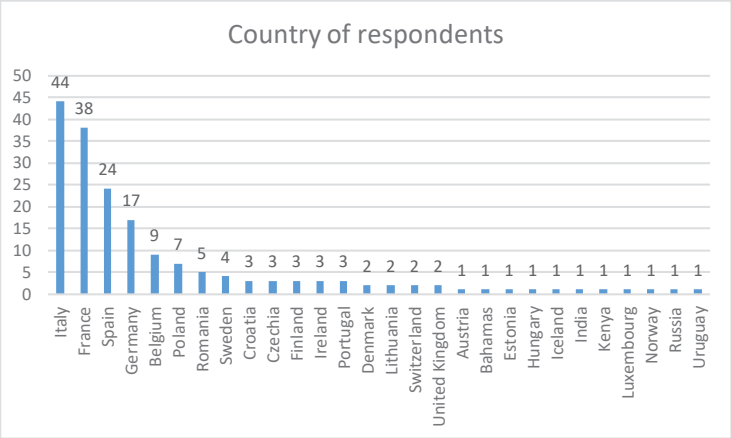
### 5. Public Consultation: "EU-wide protection of geographical indications for non-agricultural products" – summary of the replies

The consultation was open during 12 weeks between 29 April 2021 and 22 July 2021 via the EU Survey online system in 24 EU languages, and received 182 responses from 28 countries, including from 18 EU Member States.

➢ *Main characteristics of the respondents*

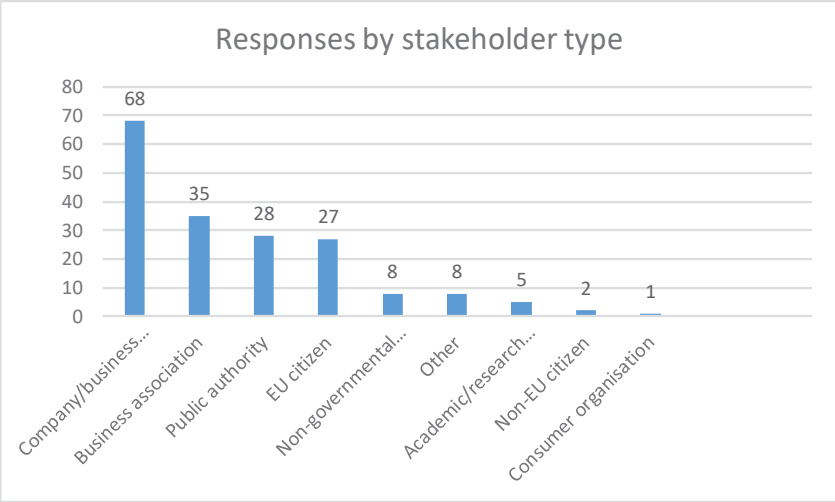
The majority of replies came from respondents in four EU Member States: Italy (44) and France (38), followed by Spain (24) and Germany (17).

Responses by **country of origin**:



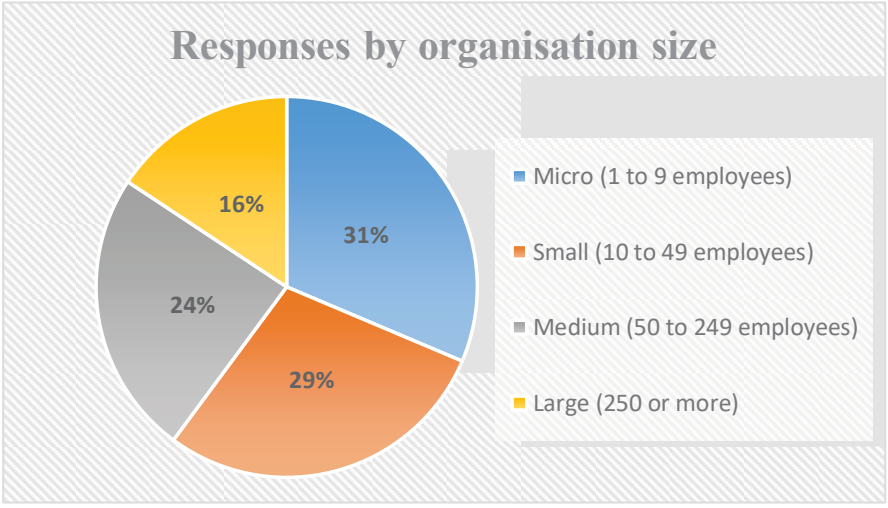

As regards the type of respondents, the majority of replies (86,8%) came from companies/business organisations (68), business associations (35), public authorities (28) and EU citizens (27).

Responses by **stakeholder type**:



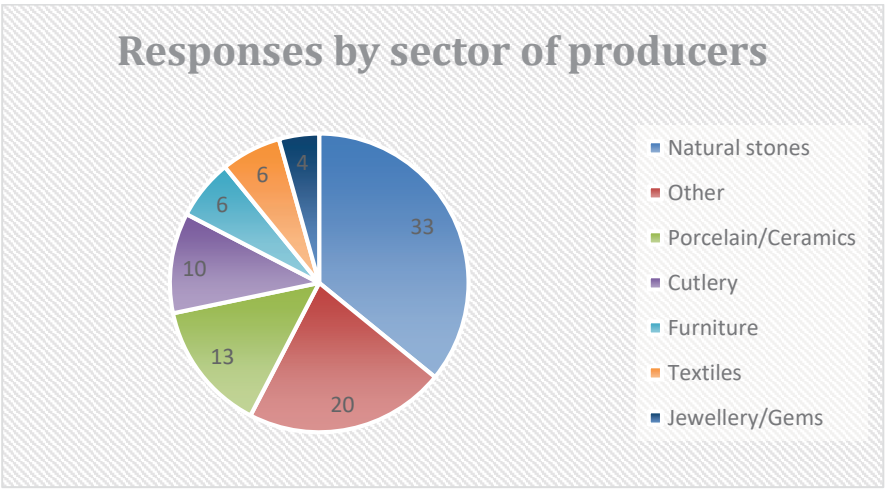

60% of the responses came from micro-size and small-size organisations (1 to 9 employees and 10 to 49 employees, respectively). 40% of the responses came from medium-size and large-size organisations (50 to 249 employees and 250 employees or more, respectively).

Responses by **organisation size (153 replies)**:



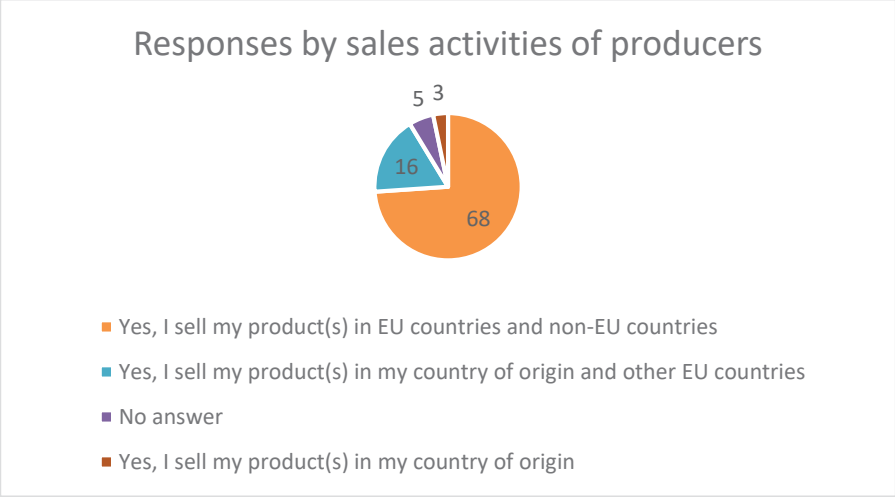

More than one third of the responses in question came from the natural stones sector (33). Other key sectors were porcelain/ceramics (13) and cutlery (10), followed by furniture (6), textiles (6) and jewellery/stones (4). More than 20% of responses (20) came from various other sectors.

Responses by **sector of producers** of geographically rooted CI products:



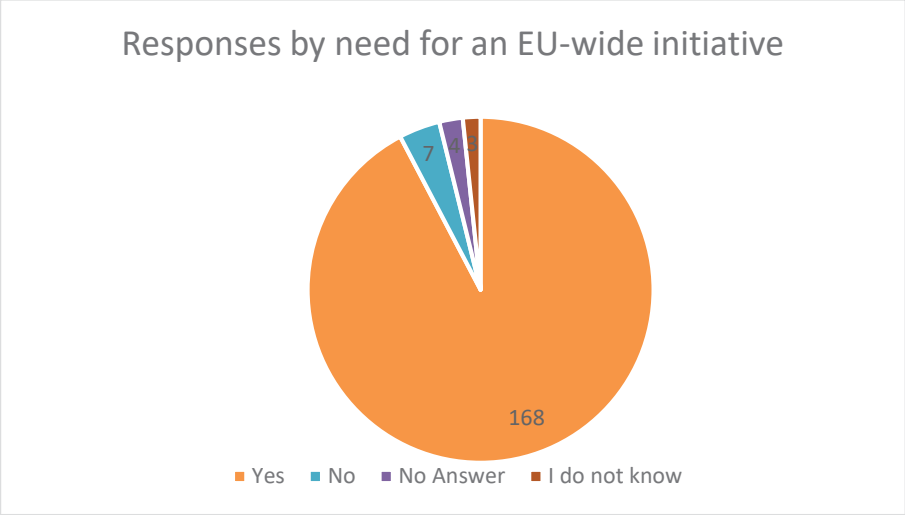

As to the sales activities of responding producers of geographically rooted CI products, more than 70% of such respondents (68) sell their product(s) in both EU countries and non-EU countries, while about 17% of producers in question sell their product(s) in their country of origin and other EU countries. Only 3 respondents sell their products exclusively on their domestic market.

Responses by **sales activities** of producers of geographically rooted IC products:

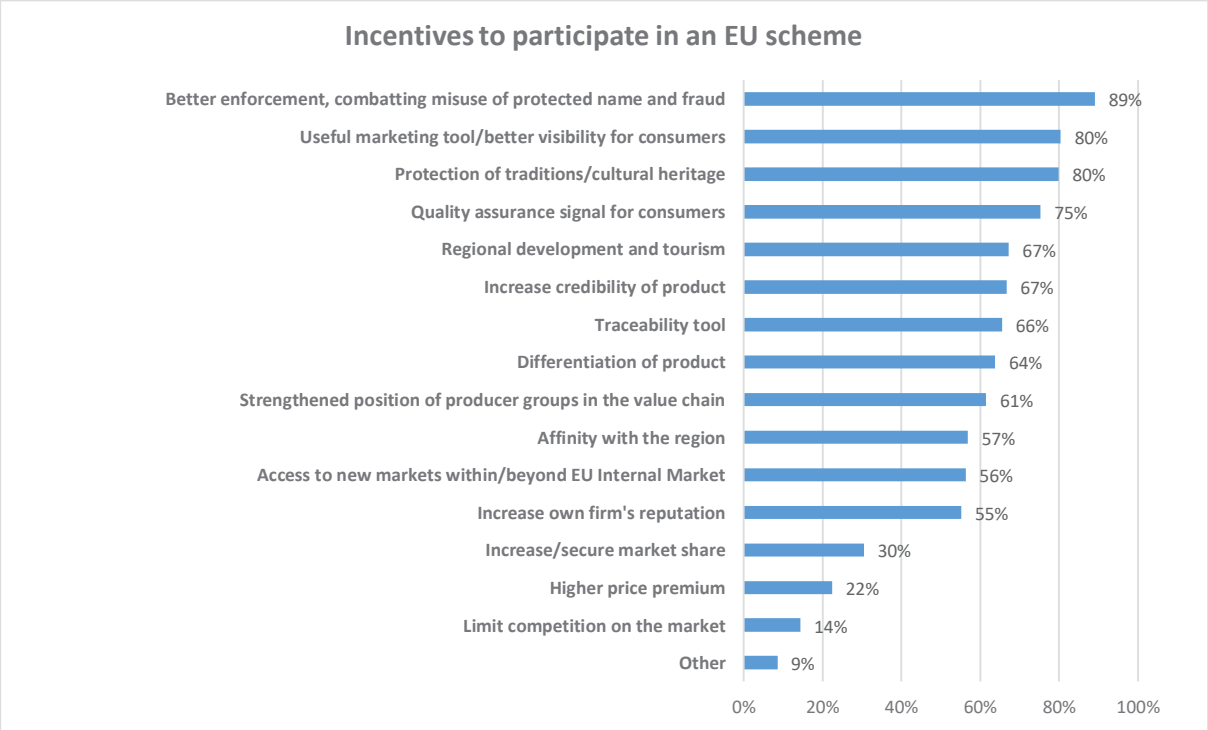


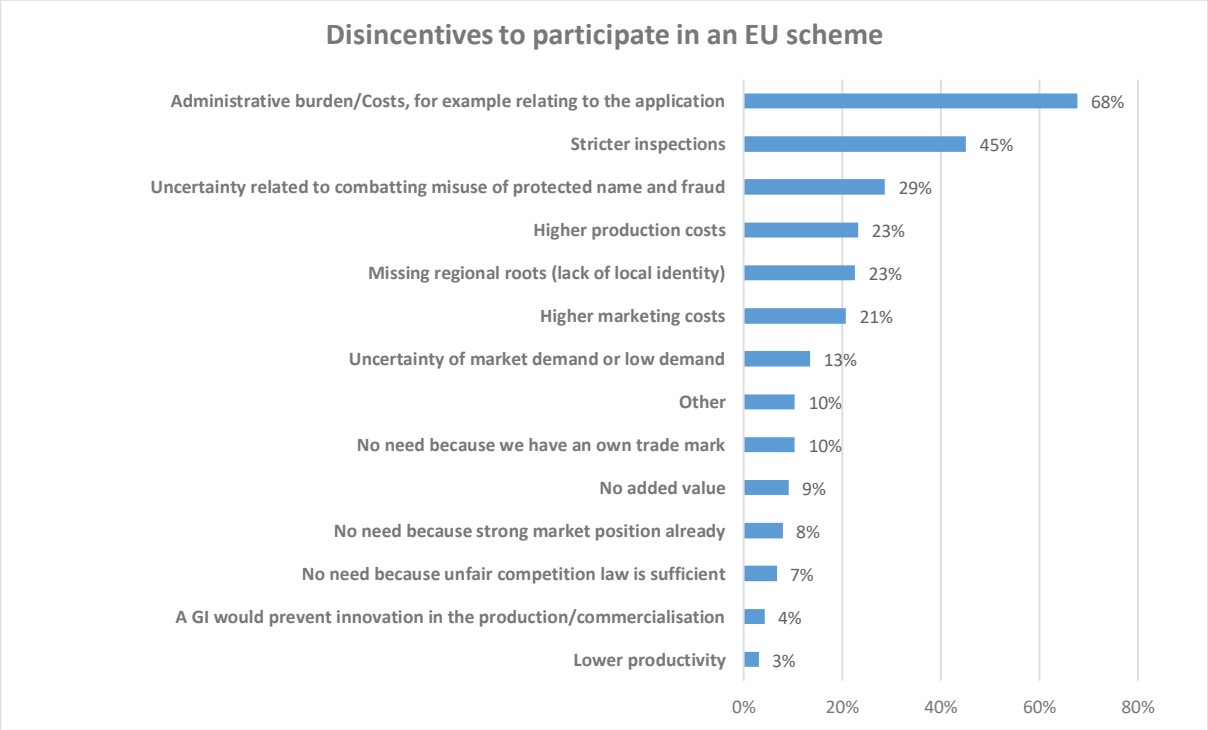

➢ *Need and (dis-)incentives for an EU-wide initiative*

A vast majority of respondents (92,3%=168) see the need for an EU-wide initiative to improve the protection of geographical names or indications for CI products. Only 3,8% of respondents (7) see no need for such initiative, while another 7 respondents expressed no specific view on the matter.




As to the list of possible incentives (174 replies received), the ones specified in most replies were 'better enforcement/ combatting misuse of protected name and fraud' (in 89% of replies), 'useful marketing tool /better visibility for consumers' (in 80 % of replies) and 'protection of tradition /cultural heritage' (in 80 % of replies). As to the list of possible disincentives (164 replies received), the one specified in most replies (68%) was 'administrative burden/ costs, for example related to the application'.

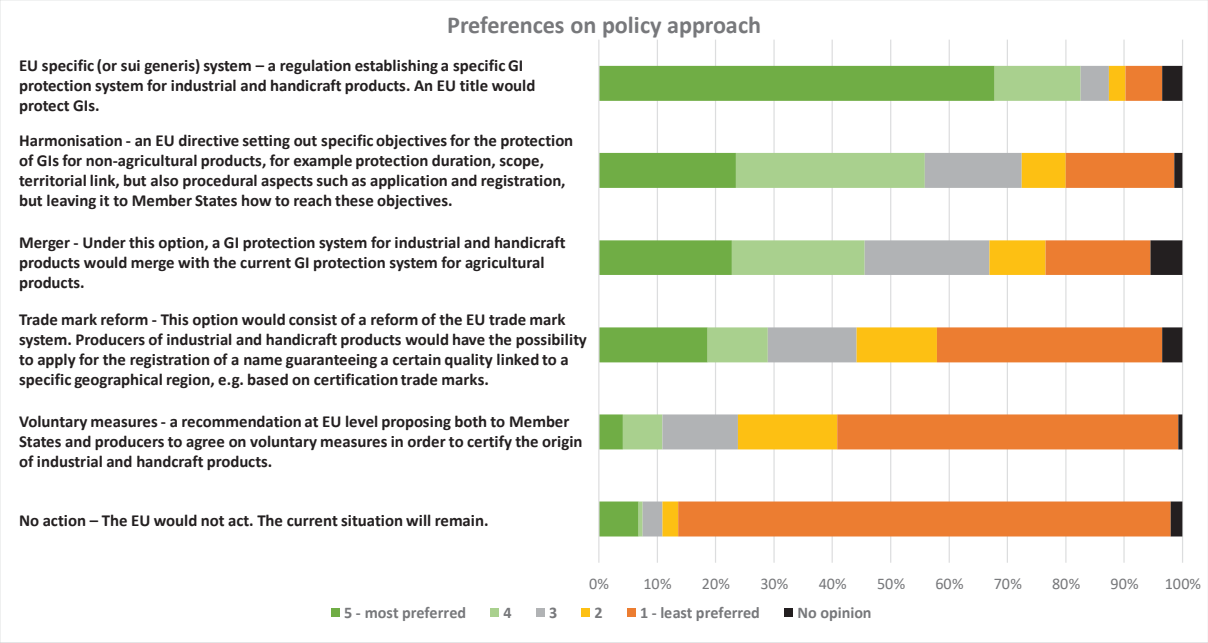



➢ *Preferred policy option for an EU-wide initiative*

The baseline of "No action" was set against five different policy options and respondents were asked to rate possible approaches from 5 (most preferred) to 1 (least preferred). From 143 to 147 replies were received depending on the policy option. As the graph below demonstrates, the following basic trends can be observed as to the preferences among possible policy options:

- The most preferred policy option (rated 5) in the opinion of most respondents is a *sui generis* system establishing an EU title to protect GIs for CI products. The preference rate of the *sui generis* option (68% of the respondents on this option) is by far higher as compared to the preference rates of the next-favoured options, namely the harmonisation option and the option of extending the GI protection system for agricultural products (neither of which amount to 25% of the respondents on the respective option).
- The least preferred policy option (rated 1) in the opinion of most respondents is the baseline scenario of no action taken at EU level. More than 80% of respondents on this option are decisively against maintaining the current situation.




➢ *Features of the preferred option*

As to various possible sub-options within the overall favoured policy option of a new *sui generis* EU GI scheme, a set of questions (16-27) addressed specific elements of such possible new regime.

*Scope and definition (Questions 16 and 17):* 93% of respondents (170) expressed a view on what kind of products should be covered by the new EU GI regime. The majority of these (101) preferred to cover all CI GI products. About 40 % (69) preferred to cover only a limited categories of products. Only about a third of respondents (67) expressed an opinion about the definition of the link between the product and its place of origin. More than 80% of these (55) selected elements characteristic of the definition of EU geographical indications, where the required link is less strict as compared to the definition of EU appellations of origin. Such preferred link would require only one of the production steps to be carried out at the place of origin, and would stress the importance of human factors, reputation or traditional know-how.

*Registration of the new EU GI title (Questions 19 and 21):* 73% of respondents (133) expressed an opinion on how many steps the registration process should involve. Almost three-quarters of such respondents (96) preferred a two-stage procedure including first a national stage, next an EU-level stage. Almost a quarter of respondents (28) preferred a one-stage procedure at EU level only. On the question whether it should be the

Commission or an EU Agency to manage the registration process at EU level, 62% of respondents (113) expressed an opinion. Less than three-quarters of such respondents (82) preferred the Commission to be in charge, and over a quarter of respondents preferred and EU Agency.

*Control and enforcement (Questions 23-27)*: Only about a third of respondents (67) provided opinions on questions related to verification and monitoring. About 40% of these (28) preferred verification carried out jointly by public authorities and producers/producer associations (hereinafter: producers), while 20% (15) preferred verification by producers only and 13% (9) verification by public authorities. In the view of more than half of respondents in question (36) the costs of verification should be borne by producers, while in the view of about a third of them (21) by producers and public authorities jointly. Only about 10% (9) were of the opinion that public authorities alone should bear such costs. As to monitoring, again, the majority of respondents (68%=46) found that it should be carried out jointly by public authorities and producers, while only about a third (21) preferred monitoring by public authorities (16), or by producers (5). As to the costs of monitoring, more than half of respondents (38) found that they should be borne by public authorities and producers jointly, while 28% (19) thought by public authorities, and only 9 found by producers. As to enforcement, the number of respondents who expressed an opinion was significantly higher (75%=136). 48% (65) preferred a general system based on IP rights enforcement while 43% (58) preferred a specific GI enforcement system.

### 6. Consultation in the GIPP (Expert Group on Industrial Property Policy)

On 22 April 2021 the Commission organised an **informal discussion** on an EU protection system for CI GIs. A discussion paper was prepared and circulated to GIPP members before the meeting. Experts from the IP administrations of 24 Member States and two observers from EEA Member States as well as the European Parliament and the Council Secretariat participated.

Participants from some Member States with *sui generis* schemes available to protect CI GIs at national level expressed strong support and preference for the introduction of a *sui generis* system at EU level. These participants were of the view that experience with the EU level system for agricultural GIs has been very favourable and explained their expectation of a boosting effect of creating similar protection for CI GIs. They also made reference to the EU's accession to WIPO's Geneva Act of the Lisbon Agreement, which is a strong incentive to create EU level protection. They foresaw multiple and very positive impacts, such as on the promotion of regions and rural development including employment, job growth and social capital building; the incentive for producers at local level to invest in traditional skills and the comparative advantage for EU SMEs, including increased trade and export revenues; positive impacts on consumers as regards high quality, authentic local products; and positive impacts on tourism. Some participants reported on existing *sui generis* systems at national level but little experience or only scarce use of these systems domestically.

Participants from some Member States having no specific *sui generis* scheme available to protect CI GIs at national level were of the initial view that there was no need for, or any added value in, creating a *sui generis* system in the EU, as trade marks, collective marks and certification marks were already available. They could not see how positive impacts could be made, as there were already sufficient means of protection in place. However, they feared negative impacts on competition in the internal market and needed to see solid evidence on positive impacts for industries.

Following the GIPP meeting, a **written consultation process** with GIPP members was launched on 24 June 2021 with the feedback period open until 12 July 2021. Two targeted questionnaires were circulated, on the one hand to gather feedback from Member States with a national *sui generis* system for CI products, and on the other hand, from Member States whose law allows for certification marks to certify the geographical origin of a product. Responses were received from 10 Member States to the first questionnaire (BG, CZ, FR, HR, HU, IT, PL, PT, RO, SI) and from 8 Member States to the second questionnaire (ES, IE, IT, LT, LV, PL, RO, SE). Responses from 2 Member States (DE, DK) and Iceland referred to neither targeted schemes being established at national level.

**Questionnaire 1** addressed details concerning existing national procedural routines. It emerged from replies that the average number of applications per year does not exceed 3 in any responding Member States, while some Member States have not received any in the past five years. The number of registrations range between 0 and 62. Fees (where charged) vary in a range of 40 to 400 €. Staff examining these applications is barely dedicated to them full time. The registration procedure does not take longer than 12 months, and it is generally lasting 4 to 10 months. There is no separate register kept, opposition may or may not be available, and renewal is typically not required (indefinite term of protection). Replies to **Questionnaire 2** concerning national certification mark regimes typically reported the lack of special statistics available on marks certifying geographical origin.

## ANNEX 2A: DETAILED ANALYSIS OF PUBLIC CONSULTATIONS

The public consultations revealed divergences in opinions on several issues. The most striking differences concerned responses from EU countries with and without national CI GI protection systems respectively. This annex presents a selection of questions where the differences were especially pronounced.

**Table 2A.1.1.** Q8.To what extent do you agree with the following statements? Please rate from 5 (strongly agree) to 1 (disagree)

| | GI countries* | | Non GI countries** | |
|---|---|---|---|---|
| | 5+4 (Agree) | 1+2 (Disagree) | 5+4 (Agree) | 1+2 (Disagree) |
| It is not fair that non-agricultural GI products do not have similar level of protection as agricultural GI products. | 96% | 2% | 50% | 50% |
| It is difficult for producers to protect their non-agricultural products within the Single Market. | 90% | 2% | 23% | 46% |
| It is difficult for producers to protect their non-agricultural products nationally. | 55% | 29% | 31% | 62% |
| At EU level, it is sufficient that producers can indicate the origin of their products using a collective or individual trade mark. | 12% | **68%** | **54%** | 15% |
| | | | | |
| Number of replies (range) | 121-125 | | 13-14 | |

*Note: * Respondents from countries with national CI GI system: Belgium, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain; ** Respondents from countries with no national CI GI system: Austria, Denmark, Finland, Ireland, Lithuania, Luxembourg, Sweden*

Respondents from Member States with GI protection (GI countries) almost unanimously agreed that the situation where non-agricultural products do not have similar protection to agricultural ones is unfair. Respondents from countries with no national CI GI system (Non GI countries) were split on the issue. Respondents from GI countries also agreed that it is difficult to protect non-agricultural products on the Single market as well as at national level. They also disagreed that trade mark protection is sufficient to indicate product origin.

On the other hand, respondents form Non GI countries considered trade marks as sufficient means for indicating product origin. They also largely disagreed that protection of non-agricultural products is difficult on the EU or national markets.

**Table 2A.1.2.** Q10. In your view, which are the most important challenges resulting from international developments? Please rate from 5 (most important) to 1 (least important)

| | GI countries* | | Non GI countries** | |
|---|---|---|---|---|
| | 5+4 (important) | 1+2 (not important) | 5+4 (important) | 1+2 (not important) |
| Producers of EU GIs for non-agricultural products cannot benefit from the EU's accession to the Lisbon/Geneva Act to get protection in third countries using the Lisbon/Geneva route, as there is no EU registration to start with. | 93% | 1% | 42% | 50% |
| Producers of non-agricultural GI products from third countries cannot get protection in the whole of the EU using the Lisbon/Geneva route, as such protection is not available at EU level. | 72% | 6% | 33% | 58% |
| The EU cannot secure protection of non-agricultural GIs via bilateral trade agreements. This is because the EU cannot include non-agricultural GIs in the lists of | 86% | 2% | 38% | 46% |

| | | | | |
|---|---|---|---|---|
| GIs to be protected by such agreements, due to the lack of EU-wide protection for non-agricultural GIs. | | | | |
| | | | | |
| Number of replies (range) | 106-109 | | 12-13 | |

*Note: * Respondents from countries with national CI GI system: Belgium, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain; ** Respondents from countries with no national CI GI system: Austria, Denmark, Finland, Ireland, Lithuania, Luxembourg, Sweden*

While respondents from GI countries considered that not being able to use the Lisbon/Geneva route to get protection outside and inside the EU is an important challenge as is the EU's inability to include CI GI products in bilateral agreements, the respondents from Non GI countries had the opposite views.

**Table 2A.1.3.** Q11. Do you believe there is a need for an EU-wide initiative to improve the protection of geographical names or indications for non-agricultural products?

| | GI countries* | Non GI countries** |
|---|---|---|
| Yes | 100% | 53% |
| No | 0% | 47% |
| | | |
| Number of replies | 151 | 15 |

*Note: * Respondents from countries with national CI GI system: Belgium, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain; ** Respondents from countries with no national CI GI system: Austria, Denmark, Finland, Ireland, Lithuania, Luxembourg, Sweden*

Respondents from GI countries were unanimous on the need for an EU initiative to improve protection of geographical names or indications for non-agricultural products, the respondents from Non-GI countries were split on the issue.

**Table 2A.1.4.** Q 13. What could be the disincentives to participate in an EU scheme for protection of geographical indications for non-agricultural products?

| | GI countries* | Non GI countries** |
|---|---|---|
| Administrative burden/Costs, for example relating to the application | 67% | 56% |
| Stricter inspections | 45% | 31% |
| Uncertainty related to combatting misuse of protected name and fraud | 30% | 13% |
| Higher production costs | 23% | 6% |
| Missing regional roots (lack of local identity) | 23% | 19% |
| Higher marketing costs | 22% | 6% |
| Other | 11% | 0% |
| Uncertainty of market demand or low demand | 10% | 31% |
| No need because we have an own trade mark | 6% | 31% |
| No added value | 5% | 44% |
| No need because strong market position already | 5% | 19% |
| Lower productivity | 4% | 0% |
| A GI would prevent innovation in the production/commercialisation | 3% | 19% |
| No need because unfair competition law is sufficient | 1% | 50% |
| | | |
| Number of replies | 141 | 16 |

*Note: * Respondents from countries with national CI GI system: Belgium, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain; ** Respondents from countries with no national CI GI system: Austria, Denmark, Finland, Ireland, Lithuania, Luxembourg, Sweden*

Respondents from both groups of the EU Member States considered administrative costs as the most important potential disincentive to participate in the EU CI GI scheme. Stakeholders from Non-GI countries considered that there is no need for joining the EU scheme as unfair competition law is sufficient to deal with the matter or it would bring no added value, while respondents from GI countries did not consider these two arguments as valid.

**Table 2A.1.5.** Q14. Which is your preferred overall policy approach regarding the possible creation of an EU-wide protection mechanism of geographical indications for non-agricultural products? The Commission proposal on GIs may result in a mix of different options. Please rate from 5 (most preferred) to 1 (least preferred)

| | GI countries* | | Non GI countries** | |
|---|---|---|---|---|
| | 5+4 (preferred) | 1+2 (not preferred) | 5+4 (preferred) | 1+2 (not preferred) |
| EU specific (or sui generis) system – a regulation establishing a specific GI protection system for industrial and handicraft products. An EU title would protect GIs. | 90% | 6% | 46% | 38% |
| Harmonisation - an EU directive setting out specific objectives for the protection of GIs for non-agricultural products, for example protection duration, scope, territorial link, but also procedural aspects such as application and registration, but leaving it to Member States how to reach these objectives. | 61% | 23% | 38% | 46% |
| Merger - Under this option, a GI protection system for industrial and handicraft products would merge with the current GI protection system for agricultural products. | 49% | 28% | 45% | 36% |
| Trade mark reform - This option would consist of a reform of the EU trade mark system. Producers of industrial and handicraft products would have the possibility to apply for the registration of a name guaranteeing a certain quality linked to a specific geographical region, e.g. based on certification trade marks. | 30% | 55% | 38% | 46% |
| Voluntary measures - a recommendation at EU level proposing both to Member States and producers to agree on voluntary measures in order to certify the origin of industrial and handcraft products. | 10% | 79% | 29% | 50% |
| No action – The EU would not act. The current situation will remain. | 2% | 95% | 53% | 33% |
| | | | | |
| Number of replies (range) | 119-126 | | 11-15 | |

*Note: * Respondents from countries with national CI GI system: Belgium, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain; ** Respondents from countries with no national CI GI system: Austria, Denmark, Finland, Ireland, Lithuania, Luxembourg, Sweden*

Respondents from GI countries favoured the EU specific *sui generis* system from CI GI protection. It would be, however, the second best choice for respondents from Non-GI countries (albeit with a very narrow difference from those opposing it). No action at EU level would be the favourite choice for Non-GI countries, whereas it was the least favoured choice for GI countries participants to the consultations. Interestingly neither GI nor Non-GI respondents preferred the trademark reform (although difference for Non-GI countries was very slim).

**Table 2A.1.6.** Q15. How do you assess the likely impact from the creation of EU-wide protection of geographical indications for non-agricultural products? Scale from 5 (very positive) to 1 (very negative)

| | GI countries* | | Non GI countries** | |
|---|---|---|---|---|
| | 5+4 (positive) | 1+2 (negative) | 5+4 (positive) | 1+2 (negative) |
| Producers | 91% | 1% | 67% | 8% |
| Cultural heritage | 89% | 1% | 71% | 14% |
| Consumers | 89% | 1% | 53% | 20% |
| Regions | 86% | 2% | 69% | 8% |
| Competitiveness | 86% | 3% | 36% | 43% |
| Competition | 83% | 1% | 15% | 38% |
| Tourism | 83% | 5% | 77% | 8% |
| Capacity to export | 82% | 3% | 45% | 9% |
| Employment | 77% | 3% | 43% | 21% |
| Environment | 59% | 9% | 38% | 31% |
| Innovation | 55% | 5% | 40% | 40% |
| Public authorities | 53% | 13% | 23% | 46% |
| | | | | |
| Number of replies (range) | 130-150 | | 11-15 | |

*Note: * Respondents from countries with national CI GI system: Belgium, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain; ** Respondents from countries with no national CI GI system: Austria, Denmark, Finland, Ireland, Lithuania, Luxembourg, Sweden*

The majority of respondents from GI countries considered that EU-wide CI GI protection would bring positive effects on all the aspects from the table above (from cultural heritage to innovation, competitiveness and competition). Respondents from Non-GI countries replied similarly, except for impact on public authorities, competitiveness and competition, which they considered as negative, and they were split on the impact on innovation.

# ANNEX 3: WHO IS AFFECTED AND HOW?

## 1. PRACTICAL IMPLICATIONS OF THE INITIATIVE

The table below indicates how the main stakeholders will be affected by the preferred option as explained in Section 8 of the Impact Assessment, by listing the key obligations that they will have to fulfil in relation to CI products, and over what timescale.

| Stakeholder | Practical implications of the initiative |
|---|---|
| **GI producer** | – Set up (jointly with other producer and authorities) producer group and rules<br>– Define (jointly with other producer and authorities) GIs specifications (including link to territory, eligible users, their rights and obligations) in line with the self-standing regulation<br>– Define (jointly with authorities) means to verify, control, and enforce the implementation of the GI specifications in line with the self-standing regulation<br>– Comply with GIs specifications<br>– Integrate obligatory GI specifications requirements into their production line<br>– Use the GI logo on the product/product label<br>– Comply with verification, control and enforcement rules (including on reporting) during the GI lifetime<br>– Involve themselves actively including financially (possible fee) in the GI producer group during GI lifetime |
| **GI producer group** | – Set up (jointly with producers and authorities) producer group legal entity and functioning rules<br>– Define (jointly with producers and authorities) the GI specifications (including link to territory, eligible users, their rights and obligations) in line with the self-standing regulation<br>– Define (jointly with producers and authorities) rules to check compliance of the GI production with GI specifications (e.g. how: on the spot/online investigation, reporting obligations; when: frequency, etc.) in line with the self-standing EU regulation<br>– Monitor compliance to ensure product conformity with the GI specifications and EU logo<br>– May bear the costs of verification of compliance with the specifications<br>– File GI application including specifications, pay the corresponding fee, and follow up incl. overcome challenges like opposition<br>– Maintain GI title (incl. file amendments)<br>– Maintain and enhance quality/quality control and inspection at different levels<br>– Promote their GI and product<br>– Monitor infringement and take actions |
| **Member States** | – Set up the relevant national authority taking up roles for scrutiny and verification of GI applications and submit them to the EU body in charge of registration<br>– Set up the relevant competent national authority (or authorities) taking up roles for checking at national level compliance of all CI GI products with the self-standing regulation requirements and the product specifications before the product is placed on the market and when the product is on the market (monitoring and control).<br>– If necessary, designate in their territories national courts and tribunals of first and second instance competent for disputes concerning the infringement and validity of EU GIs for CI products<br>– If necessary, inform the Commission of the names and addresses of the national authority taking up roles for monitoring the national registration procedure, the competent authority(ies), and the national courts and tribunals |

| | |
|---|---|
| | of first and second instance |
| **National authority – procedures** | National authorities will be competent for the main assessment of GI applications, hence:<br>– Monitor the preliminary procedure (main assessment) that includes scrutiny, publication and opposition of GI applications<br>– When the application qualifies for the favourable decision, obligatorily issue a declaration that it considers that the application lodged would meet the common standards set out in the self-standing regulation<br>– Provide information to the EU body for each registration and updates during the GI lifetime (can be delegated to the GI producer group)<br>– May contribute (with producers) to costs for verification of compliance with the specifications |
| **Competent authority - enforcement** | – Check at national level compliance of CI GI products with the self-standing regulation requirement and the product specifications before the product is placed on the market and when the product is on the market<br>– Control the labelling requirements, notably use of the EU logo<br>– Co-operate with authorities within the Member State and across the Member States |
| **EU (Commission/ EU body (EUIPO)** | – Shares competence for the assessment of GI applications including the 'link to the territory' checks with the EU Member States checks the GI applications for manifest errors only<br>– Assess (either itself or by delegation) and registers the CI GI in the EU Registry<br>– Handles applications for international registrations based on EU level registrations<br>– Assess international applications from third country Lisbon members seeking protection in the EU |

## 2. SUMMARY OF COSTS AND BENEFITS

Table I and II present systematically the costs and benefits identified and assessed during the impact assessment process.

| ***I. Overview of Benefits (total for all provisions) – Preferred Option*** | | |
|---|---|---|
| ***Description*** | ***Amount*** | ***Comments*** |
| ***Direct benefits*** | | |
| Economic benefits | In the longer term, it could lead to economic development of GI region and yield an overall expected increase in intra-EU trade of these goods of about 4.9-6.6 % of current intra-EU exports (€ 37.6-50 billion) [216]<br>In the case of Solingen producers estimate that the use of the name Solingen raises the willingness to pay by about 30 percent [217] | Help producers seize opportunities to develop and commercialize CI products<br><br>Raise the willingness to pay of the consumers |
| Social benefits | The analysis shows a potential increase of regional level employment by 0.12-0.14 %. Overall, this move would help create between 284 000 and 338 000 new jobs across the EU[218] | Positive effect on employment[219] |

[216] 2020 Study p. 82
[217] 2020 Study p. 82
[218] The analysis shows a potential increase of regional level employment by 0.12-0.14 %. Overall, this move would help create between 284,000 and 338,000 new jobs across the EU Geographical indications.

| | | |
|---|---|---|
| Consumer benefits | e.g. producers of Perpignan Garnet Jewellery mentioned that demand has increased by 20-30 percent, since the recognition under the French GI regime[220] | Enhanced visibility on authenticity and quality of products |
| ***Indirect benefits*** | | |
| Environmental benefits | | GI protection is a way to increase economic sustainability to the benefit of all stakeholders[221] |
| Tourism benefits | | Potential reputational effects for the region: raise the visibility of the product and the region, benefiting also the related industries such as tourism[222] |
| Cultural heritage | | Help save products that have a long history behind them like Swiss watches, or Baluchari saree[223] |

| ***II. Overview of costs (in million EURO)*– Preferred option*** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Stakeholders / Action | | Consumers | | Producers of GI products | | MS Authorities | | Commission/ EU body (EUIPO) | |
| | | One-off | Recurrent | One-off | Recur-rent | One-off | Recurrent | One-off | Recur-rent |
| **(a) Setting up a CI GI protection system** | Direct costs | | | | | Time for staff to acquire new procedures [224] Cost to implement the MS Scrutiny procedure [225] | | .Time for staff to acquire new procedures .2 years is estimated to implement the IT system for CI GIs application files[226] | |

for non-agricultural products, Cost of non-Europe report (2019) https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2019)631764 pp. II, 24-27.

[219] Ibidem.

[220] VVA *et al* (2020), supra note, p. 81.

[221] 2021 Study on Monitoring and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU, p.137 and 167; and in the agricultural area, some MS authorities use the specific GI protection as a tool to encourage sustainable development (Evaluation support study on Geographical Indications and Traditional Specialities Guaranteed protected in the EU p.246-247).

[222] VVA *et al* (2020), supra note,, p. 81.

[223] VVA et al (2020), supra note, Annex 1: Case study 6: GI and trade mark protection in non-EU countries pp.7-9.

[224] See Annex 9.

[225] See Annex 9.

[226] See Annex 9.

| (b) administration and monitoring of the CI GI protection system: annual cost per one GI (EUR) | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| registration | Direct costs | | | 15,000 | | 7,500 | | 17,000 | |
| verification | Direct costs | | | 5,700 | | 100 | | | |
| Management / monitoring / enforcement | Direct costs | | | | 3,000 | | 3,900 | | |

# ANNEX 4: ANALYTICAL METHODS

Analysis of the potential impacts of the different policy options for a future geographical indication (GI) protection system at EU level for craft and industrial (CI) products (i.e. other than already protected at EU level) is based on the methodology proposed in the Better Regulation Guidelines for impact assessment of the Commission[227].

Likely economic, social and environmental impacts, as well as their distribution across stakeholders were identified in relation to the five different options[228]. Next we compared the different options with regard to their effectiveness, efficiency and coherence, as well as their compliance with the proportionality principle. The analytical framework used for the purpose of this impact assessment draws in particular on the three support studies on specific aspects of CI GI protection i.e.:

- 2013 Study on geographical indication protection at EU level for non-agricultural products in the internal market;
- 2020 Study on Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU;
- 2021 Study on Monitoring and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU.

This annex focuses on a description of the models used there which are also explained in the Studies directly.

## I. Common methodology:

| | Objective | Geographical scope | Protection systems |
|---|---|---|---|
| 2013 Study | • An assessment of the current regional, national and international legal means and models of protection available in EU Member States for the protection of geographical indications of CI products;<br>• An economic analysis of the market for CI products bearing geographical indications which are currently protected in EU Member States and of the CI products bearing names which could potentially | • In the 27 Member States of the EU, Iceland, Liechtenstein, Norway and Switzerland<br>• With a specific emphasis on the following countries: Bulgaria, Czechia, Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom | output (on the basis of an international definition of geographical indication protection i.e. Article 22 of the trade-related aspects of intellectual property rights i.e. TRIPS Agreement):<br>•Consumer deception and unfair trade practices laws<br>• Specific laws which protect individual CI GI products<br>•Trade mark laws |

[227] https://ec.europa.eu/info/sites/default/files/better-regulation-guidelines-impact-assessment.pdf

[228] Option 1: Merging the existing system for agricultural products, wines and spirits with a new regulation on GIs for CI products; Option 2: A self-standing EU Regulation creating a unitary protection system exclusive for CI products based on a *sui generis* IP right at EU level;; Option 3: A reform of the trade mark system with the aim of accommodating the need of producers to market their products as guaranteeing a certain quality linked to a specific geographical region, e.g. on the basis of certification or collective trade marks; and two discarded options: i) Recommendation or voluntary measures; ii) Approximation of national laws.

| | | | |
|---|---|---|---|
| | be protected as geographical indications in the future.<br>• In light of the above, relevant and feasible options for the possible creation of a unitary title of protection of geographical indications for CI products across the EU. | | • *Sui generis* GI systems. |
| 2020 Study on Economic aspects | • To evaluate factors limiting the availability of non-authentic products and misleading commercial practices;<br>• To assess the value of *sui generis* GI protection to consumers, as well as the impact of such protection on consumers;<br>• To assess the value of *sui generis* GI protection to producers of authentic geographically rooted products;<br>• To assess the value of *sui generis* GI protection in comparison with other IP instruments; and<br>• To assess whether the same level of protection could be attained through other (i.e. not *sui generis* GI) protection instruments. | • In the EU28 Member States.<br>• Experimental research and interviews was carried out in a diverse set of countries so that its results can be considered relevant, representative and, to the extent possible, allow extrapolation to the EU28.<br>• At least one third of the EU Member States figure in the shortlist of 25 products, and these Member States reflect the balance of products among the geographical regions at European level (North, East, South and West[229]). | • *Sui generis* GI protection<br>• Individual trade mark<br>• Collective trade mark<br>• Certification mark<br>• Industrial design right<br>• Certificate of authenticity |
| 2021 Study on Monitoring and enforcement rules | • To collect and synthesise data on control and enforcement mechanisms under existing EU and national protection systems,<br>• To assess the effectiveness, cost-effectiveness and relevance of the existing control and enforcement mechanisms,<br>• To develop recommendations for control and enforcement under a potential EU system for the protection of geographically rooted | • The selection aimed to cover a representative sample of EU Member States, including in particular Member States where the number of protected geographically rooted products is low or very low.<br>• Three non-EU countries: Switzerland, India and Mexico, from three world regions (Europe, America and Asia), with a relevant | • EU collective marks,<br>• EU certification marks,<br>• National certification marks,<br>• National *sui generis* GI protection of CI products,<br>• EU *sui generis* GI protection of agricultural, food and drink products,<br>• GI and trade mark protection systems in non-EU countries. |

[229] North: Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Sweden, United Kingdom; East: Bulgaria, Czechia, Hungary, Poland, Romania, Slovakia; South: Croatia, Cyprus, Greece, Malta, Italy, Portugal, Slovenia, Spain; West: Austria, Belgium, France, Germany, Luxembourg, Netherlands.

| | | | |
|---|---|---|---|
| | CI products. | number of geographically rooted products, and representing three different levels of trade integration via international agreements. | |

As regards **objectives**, the first study focused on mapping the existing legal means of protection, while the 2020 Study covered economic aspects in particular consumers' perception of the existing means of protection, and the 2021 study completed the landscape with data on control and enforcement mechanisms under existing protection systems. The **geographical coverage** focussed on the EU and, in 2013 and 2021, also on a few third countries chosen according to their relevance to the subject of each study. As regards the **scope**, the three studies aimed at covering all possible existing protection systems determined in accordance with international standards (Article 22 of the Agreement on Trade-Related Aspects of Intellectual Property Rights –TRIPS-Agreement). While the first study had identified the category 'unfair competition and consumer protection laws' as a protection system, search and experimentation on the basis of this category had been discarded afterwards because protection under this scheme remains largely theoretical and costly and is therefore not used in practice. In addition, the 'specific laws which protect individual CI GI products' category identified in the first study has been grouped in the last two studies with the 'specific (*sui generis*) system' to which it belongs.

As regards the **overall methodology**, each study was carried out in three phases (inception, data collection, analysis). An overview of the used methods is provided below.

**Estimation of costs**

Cost were estimated based on "2021 Study on Monitoring and enforcement rules" with some modifications due to changes in the policy options that were not considered at the time the study was launched.

**Disclaimer: Cost estimation should be treated with caution as they are based on assumptions made by contractor (AND International & VVA, 2021) on the basis of research, surveys and interviews. These are average estimation of cost and the actual cost may vary with the size of the producer, complexity of the product and production method as well as individual choices as regards control and certification. These cost estimations, however, allow for comparison of different options on common basis.**

The calculations are based on the following assumptions[230]:

- average number of 10producers per GI producer group
- Time needed to draft an application by producer group (there are no detailed data on this aspect so this assessment is theoretical; however, it can be considered that

[230] VVA & AND International (2021), supra note, pp. 157-158.

costs are higher for PO1 and 2 compared to PO3 due to the higher complexity of the application process):

  - EUR 7,500 / application for PO3,
  - EUR 15,000 / application for PO1 and 2,

- Assessment of application by national authority: EUR 7,500 / application for PO1 and 2 (estimated based on data from French authorities, no national assessment of application for PO3),
- Assessment of application by EU authority:

  - EUR 1,500 / application for PO3 (compared to a few hundred euros for trade marks), this would be paid as a registration costs by producer /producer groups),

  - EUR 20,000 / application for PO1 and 2 (compared to EUR 33,500 /application for DG AGRI; it is considered that the application file will be less complex for non-agricultural GIs products than for agriculture, food and drinks GIs).

- Annual costs of verification for each producer involved: EUR 600 / year,

- Annual monitoring and enforcement costs by GI: EUR 300 / year,

- Annual costs for verification when public bodies are involved: the costs for public authorities are estimated at 10% of the costs for producers (most of the costs being are paid by producers, for the verification at production stage).

- Management by national authority: it is considered that there are specific management costs only in those Member States with at least 15 GIs applications. In other Member States (with a limited number of GIs), costs are considered only for each single application (see above). The costs for management by national authorities are estimated based on data from the INPI in France: EUR 93,000 / year for 17 applications (prorata based on the number of GIs in Member States with significantly higher number of GIs, namely Germany and Spain).

- Management by EU authorities: two full-time equivalents (FTE) at EU level are considered with costs / FTE at EUR 75,000 (total estimated at EUR 150,000 FTE).

Additional Commission assumptions to assess sub options of PO2:

- Inclusion of renewal fee of EUR150 into annual producer registration cost of PO3 (renewal every ten years, cost of EUR15,000).[231]

- Cost of PO2.2.B for EUIPO are estimated at EUR 17,000 per CI GI. This includes around EUR6,000 for cost connected with registration – based on calculations from the EUIPO (Annex 9, Option 1.3)[232]. And around EUR11,000

[231] EUIPO fee structure: https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo

[232] EUIPO estimated that around 12 FTE will be necessary annually to handle 267 CI GI registrations (they assume that 800 CI GI will be registered within the first three years). Based on EUIPO budgets for 2021 and 2022 we have calculated an average FTE cost of EUIPO. By multiplying the average FTE cost by 12

for translation of documents into all official languages (mostly machine translation followed by a human verification).

- Cost of verification/control for producer under PO2.4B set at 95% of the same cost of PO1 to take account of savings due to self-declaration.[233]
- Cost of random verification/control for authorities under PO2.4.B set at 13% of the same costs of PO1 and rounded to EUR100.[234]
- For the purpose of absorption of existing around 40 national GIs by the EU scheme, the owners would have to express their interest to do so. Consequently, we have not treated their costs differently in cost calculations.

and dividing by 267 we arrived at an average cost of registering one CI GI of around EUR6,000. EUIPO budgets are available at: https://euipo.europa.eu/ohimportal/en/transparency-portal/economic/office-budget

[233] Evaluation of the Internal Market Legislation for Industrial Products (SWD (2014) 23) determined that an average cost of conformity assessment with third-part did not represent more than 5% of the total compliance costs incurred by firms.

[234] Based on evidence from evaluation of the machinery directive SWD(2018)160, p. 26.

| Study | Used Methods | Limits | Corrective measures |
|---|---|---|---|
| 2013 Study on geographical indication (GI) protection at EU level for non-agricultural products in the internal market (Insight Consulting, REDD, OriGIn Consortium) | 1°) Select a team of experts<br>2°) Define 'geographical indication' in accordance with international standards (TRIPS Agreement)<br>3°) Select **sample** of 129 products in (targeted) 31 countries through identifying 834 products (presence of one of the three TRIPS criteria + link with territory) + actually produced + for which info is available<br>4°) Draft and translate legal and economic questionnaires, gather **survey** information back (and when needed complete with desk research and/or follow-up interview), and eventually analyse and compare through inductive empirical method the<br>. legal instruments available in the 31 countries, as well as the relevant international legal framework (legal part + 31 country sheet)<br>. structures of the supply-chain and market (number, size and market share of enterprises, number of competitors and market share of 3 main, number of consumers), economic value of the market, as well as other indicators (employment rate, geographical area of the market, imports from third countries, estimation of loss of producers' revenues caused by counterfeit products, including costs of court actions). (Economic part)<br>6°) Draft 29 **case studies**<br>7°) **Survey** 700 producers and other public or private stakeholders on their satisfaction/dissatisfaction with the existing means of protection, and positive or negative views about a possible future EU-wide system<br>8°) **3 options for the protection of CI GI products at the EU level identified** on the basis of the legal and economic analysis as well as the stakeholders survey, input from the experts, EU (subsidiarity and proportionality principle) and international contexts and eventually fine-tuned in line with the input from the Study **workshop**<br>Option 1: no policy change<br>Option 2: soft law approach<br>Option 1Option 1: new EU legal framework either approximating national laws (Directive) or fully harmonising (Regulation) | 3°) Do the 129 products represent the EU market? not detailed<br>3°) 4°) Product sample insufficient to gather quantitative data<br>7°) Answer to survey (219) insufficient to gather quantitative data<br>8°) very limited 3 options analysis:<br>- restricted to the subsidiarity and proportionality principles only (effectiveness and efficiency missing, nothing on costs)<br>- modelled on the existing sui generis legal system<br>- supported by a non-quantitatively representative stakeholders survey | 3°) Method of selection refined in later studies<br>3°) 4°) Product sample treated as mere qualitative data (case studies)<br>7°) Answer to survey treated as mere case studies (qualitative data)<br>8°) Limits to the analysis of 3 options highlighted in the study |
| 2020 Study on Economic aspects of geographical indication (GI) protection at EU level for non-agricultural products in the EU (VVA) | 1°) **Literature review** based on relevant, important, and rigorous assessed studies on GIs starting from recent studies, covering as well key word search on Google Scholar in 6 European languages.<br>2°) country experts selecting a **sample** of 25 products from 322 Geographically rooted products in the EU on the basis of<br>- Representativeness of the chosen products and product groups<br>- Variation of protection instruments in place for the chosen products<br>- Comparability of products<br>- Geographical representation of EU<br>- Compatibility with consumer experiments<br>3°) **Mystery shopping** (in 102 shops, i.e. about four shops per each of the 25 products***)*** to assess whether the average customer can distinguish authentic from non-authentic products in the shops.<br>4°) **Behavioural experiment** to assess the participants' willingness to pay for authentic products, their ability to identify authentic products and related search costs**,** conducted in July and August 2019 and carried out in an actively managed online panel ***(***sample size N = 3,005 with approx. n = 500 participants per country covering six EU countries from different regions and of different size**,** sample within each country representative of the (online) population based on gender, age and state-level regions***)***.<br>5°) For all 25 products producers, business associations, municipalities and other stakeholders were **interviewed** (+ 50 interviews) between March and July 2019 in 10 countries on the products, the industries, and the ways in which producers use and protect the use of the geographical origin.<br>6°) A Stakeholder **workshop** held in November 2019 to share the findings of the study with producers, associations, academics, European Commission and other stakeholders, who | 3°) 102 visited shops are not a statistically representative sample for the shops selling the five types of products in the EU | 3°) However, the results provide some indications on how different types of products are protected<br>4°) Study stresses that it is important to take into account the context when interpreting the results of the behavioural experiments e.g. that all products are rather unknown to participants and not many participants have recently purchased the products from the experimental tasks.<br>In addition, results of the mystery shopping where taken into account to interpret the behavioural experiments. |

| | | | |
|---|---|---|---|
| | provided feedback and insights for the study. | | |
| 2021 Study on Monitoring and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU. (VVA Consortium) | 1°) Screening of the trade mark and GI databases of the EUIPO and the national intellectual property offices and selecting a **sample** of 30 GIs or marks that are currently protected by the existing protection EU and national systems representing the six protection systems under the scope of this study equally (i.e. five GI products/marks for each protection system) and covering 17 countries: Austria, Belgium, Bulgaria, Germany, Finland, France, Hungary, Ireland, Italy, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland, Mexico, India.<br>2°) A team of national researchers<br>- conducted online-based **desk research** into the 30 products from the sample, consulting national legislation, relevant databases, practical information available on the websites of national or regional bodies responsible for the registration, and any other relevant reports or data.<br>- contacted 130 key stakeholders (national and public authorities responsible for registration, business and producer associations or regional local authorities owning or managing the marks/GIs and monitoring products on the market, individual producers of the protected products) and conducted 78 semi-structured **interviews**<br>3°) Launching a **stakeholder survey**, targeting 220 producers of non-agricultural GI products in all 27 EU Member States and certain non-EU countries (identified from the mapping of non-agricultural geographically rooted products that was carried out for the 2020 study, but excluding the producers of the sample).<br>- Among the 57 submitted complete responses from thirteen different countries the feedback of 23 representing a geographically rooted product that is not currently protected by any protection system was introduced in the study to explore why producers are currently not using the existing protection systems, and what their needs would be from a potential protection system.<br>- Feedback from the other 34 respondents, representing products already benefiting from various existing protection systems was used to complement the desk research and interviews conducted for the products from the research sample that cover the same protection systems.<br>4°) Options: **elaborating six comprehensive case studies** (one for each of the six protection systems) based on the findings from the desk research, the interviews and the survey, structured by the four phases of the control and enforcement process (i.e. link between the product characteristics and the territory, verification of the products and production process, monitoring of the market, enforcement and sanctions). The case studies present how each phase is implemented in practice for each protection system, also looking into the effectiveness, the costs and the relevance for stakeholders associated with each phase.<br>5°) A Stakeholder **workshop** held in July 2021 to share the findings of the study with producers, associations, academics, European Commission and other stakeholders, provided feedback and insights for the study | 1°) The sample of GIs on which the study is based is not exhaustive<br>1°) The sample of shops visited for this study is not large enough to be representative | 1°) The list was then screened to represent the diversity of GI products in the EU, for an unbiased selection of products for further analysis.<br>1°) Limits to the analysis on the basis of the sample of visited shops highlighted in the study |

With regard to the collection of data, the following key methodological and analysis tools were implemented in the three studies:

- Desk research;

- Interviews with stakeholders;

- Case studies;

- Workshops with key stakeholders.

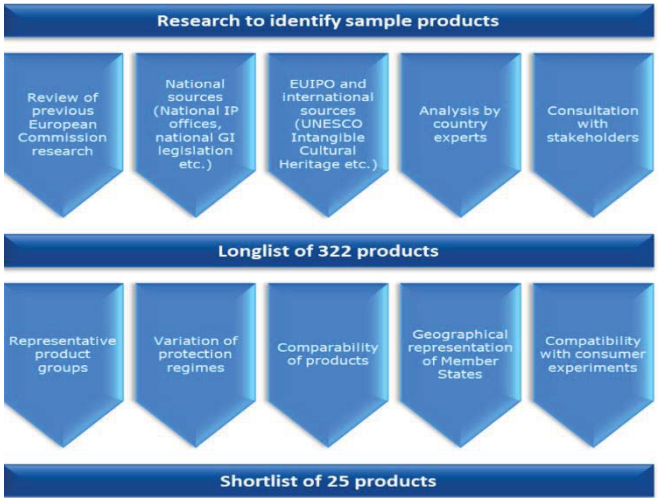
All three studies followed the same approach to **selecting geographically rooted products**: They started by defining 'geographical indication' in accordance with international standards (see above reference to the TRIPS Agreement), determined the

corresponding criteria (production and geographical link of the product with a specific area; specific know-how and/or method of production; reputation), ascertained the presence of the product on the market and the willingness of producers to cooperate, then reviewed existing EU and national sources (public and/or private databases) and identified (with the help of country experts) products corresponding to this model in the geographical area covered by the study. The geographical area was slightly distinct in each study but always focused on the EU territory at that time (EU28 or EU27).

Then the approach was fine tuned to match the objective of each study.

- In the 2013 Study, the objective was to collect as much information as possible on the legal protection and economic value of CI GI products. The limited resources available to conduct the study, prevented from looking for detailed information on the initial 834 screened products. A sample of 129 as wide a variety of products as possible from as many countries as possible was selected based on several criteria (different sectors, unprocessed and processed products, products protected through various legal instruments, products with an important economic significance, and products monitored by an association of producers or equivalent). However the study did not detail the quantity of products allowed to each category. Whether the products are therefore representative of the EU market is therefore difficult to establish.

- In the 2020 Study, as appears under the below figure:




  The 322 products had been selected from the list of 834 products identified in the 2013 Study. The list was then screened to represent the diversity of GI products in the EU, for an unbiased selection of 25 products for further analysis. The following fixed set of criteria were taken into account: representativeness of the chosen products and product groups, variation of protection instruments in place for the chosen products, comparability of products, geographical representation of EU Member States, compatibility with consumer experiments.

- After the first screening, the 2021 Study selected a sample of 30 GIs or marks that are currently protected and representing the six protection systems under the scope of this study equally (i.e. five GI products/marks for each protection system) and covering 15 EU MS plus three third countries. The selection aimed to cover a representative sample of Member States, including in particular Member

States where the number of protected geographically rooted products is low or very low. Then, the sample was further developed or not depending on the research activity carried out:

- The desk research was conducted directly into the respective products from the sample.
- 78 interviews were conducted on the basis of 130 requested placed on key stakeholders from three main categories (national and public authorities responsible for granting trade marks and GIs, business and producer associations or regional local authorities owning or managing the marks/GIs and monitoring products on the market, individual producers of the protected products)
- The survey was shared directly with 220 stakeholders identified based on the mapping of CI geographically rooted products that was carried out for the 2020 Study but excluding the producers of the 30 products from the research sample. In total, 145 stakeholders accessed the survey, of which 57 submitted complete responses.

## II. Specific approaches

The 2020 Study developed in addition very specific mystery shopping and behavioural experiment methods to analyse EU consumers' perception. While, to analyse the benefits, costs and effectiveness of the monitoring and enforcement mechanisms, the 2021 Study developed a cost-effectiveness analysis.

### a) Mystery shopping and behavioural experiment methods in the 2020 Study

To present how consumers perceive *sui generis* GI-protected products in comparison to other authentic and non-authentic products, the 2020 Study chose two methods that complement each other very well: mystery shopping and behavioural experiment.

The purpose of the **mystery shopping** was to assess whether the average customer can distinguish authentic from non-authentic products in the shops. The 2020 Study visited 102 shops in 10 countries i.e. about four shops per each of the 25 products chosen of the sample selected for in-depth analysis from 322 geographically rooted products in the EU on the basis of the representativeness of the chosen products and product groups, variation of protection instruments in place for the chosen products, comparability of products, geographical representation of EU and compatibility with consumer experiments (see above table). For each of the 25 products, a comprehensive product fiche was drafted. The 102 completed mystery shopping protocols were then processed into a central database for the analysis of the findings.

The purpose of the **behavioural experiment** was to assess the participants' willingness to pay for authentic products, their ability to identify authentic products and related search costs. The experiment was conducted in July and August 2019 and carried out in an actively managed online panel.

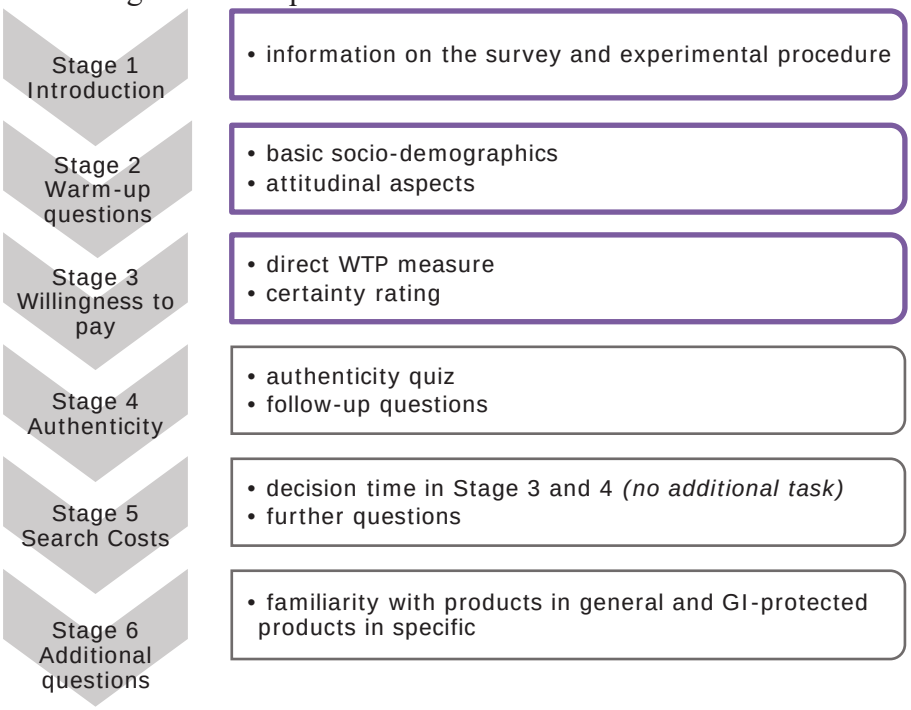
The total sample size was N = 3,005 with approx. n = 500 participants per country covering six EU countries from different regions and of different size. The six countries were a subset of the ten countries where mystery shopping took place. Countries were selected such that they were balanced across all European regions (Western, Northern, Southern, Eastern) covering both small and large Member States.

The sample within each country was representative of the (online) population based on gender, age and state-level regions.

The experiment consisted of six stages which are summarized in the below

Figure 1 of the Study.

Figure 1: Six stages of the experiment




Under stage 3, the (Willingness To Pay) WTP-decision format consisted of three main components:

- **Product presentation** with product name, neutral image and three key attributes (e.g. geographical origin, manufacturing technique and material) based on insights from the mystery shopping
- **WTP Question** where participants indicated the maximum amount they would be willing to pay for the product
- **Certainty rating** where participants indicated how sure they are that they would really buy the product for the indicated amount

Within each product category six different variants were tested. Over the five rounds participants were randomly assigned to all five different product categories, i.e. each participant rated the knife, porcelain, lace, piece of furniture and jewellery, as well as five out of the six product variants. The results only included participants that indicated to be certain about their WTP.

In the authenticity quiz (stage 4) participants were asked to make **pairwise comparisons** between (simulated) non-authentic and (simulated) authentic *sui generis* GI-protected products respectively and other protected products within the same category. The basic task was to decide which product is authentic. The decision was repeated for **five rounds** and for each correct decision participants received an additional amount of money on top of their general payment. Products in the authenticity quiz were presented with a neutral image, product name and three key attributes (e.g. geographical origin, manufacturing technique and material). In each product category **nine different pairs** were tested. The pairs were constructed based on results from the mystery shopping and composed of three variations of the authentic GI-protected product (tested without further information

on the protection instrument / "no label", with the PGI-label, and with a ™-sign) and three **potentially misleading practices** for non-authentic products. Over the five rounds participants were randomly assigned to all five different product categories, as well as five out of the nine product pairs.

As a direct measure of **search costs** (stage 5), the **time necessary to detect the authentic product** in the authenticity quiz was measured and additional questions eliciting participants' preferences when buying a product were asked.

Then the study analysed the results of the mystery shopping and behavioural experiment methods. This analysis included information about **weaknesses in the methodology (see details in the above table)**.

### b) cost-effectiveness analysis in the 2021 Study

Having assessed first the effectiveness of the monitoring and enforcement mechanisms, to analyse their **costs-effectiveness**, the 2021 Study **mapped the costs and benefits** at the distinct stages of the control and enforcement process for the different stakeholders involved, with a focus on quantifiable costs. The study considered the different types of costs resulting from the implementation of public policies as defined in the Better Regulation Toolbox. Three types of costs: direct costs, enforcement costs and indirect costs were assessed as further detailed in the following table.

| | | | EU collective mark | EU certification mark | National certification mark | National non-agricultural GI | EU GI protection for agricultural, food and drink products | Non-EU GIs |
|---|---|---|---|---|---|---|---|---|
| Direct costs | Regula-tory charges | Registration costs (one-off) | From EUR 1,500 to 1,800 for a registration and from EUR 850 to 1,000 for a renewal | | From EUR 97 to EUR 300 | From EUR 0 to a few hundred euros | No costs at EU level (there may be some cost at MS level: EUR 605 in Austria for instance) | From free up to EUR 58 (India) |
| | | Costs related to the right to use the mark (generally annual) | From EUR 100 to EUR 4,000 | From about EUR 1,000 to EUR 10,000 | From free up to EUR 1,100 | From free or about EUR 100, up to EUR 6,000 for larger companies in one GI | From free to few thousand EUR | From free to few thousand EUR |
| | Substantive compliance costs (annual) | | Generally a few hundred euros / year, up to a few thousands | Generally from EUR 10,000 up to EUR 20,000 for each company | From 0 EUR (no verification) up to EUR 20,000 | From EUR 0 up to EUR 700 / year | From a few hundred euros for farmers to a few thousand euros for processors | EUR 905 for one product, no data or negligible costs for others |
| Enforcement costs | Monitoring of the market | | Very limited | Very limited | No information | Very limited | No information | No detailed information, limited costs; included in verification procedure for one GI |
| | Enforcement and sanctioning | | Limited | Rarely occurs, several thousand of euros for legal action | No specific costs | For one GI: a few euros for notification letter, a few hundred euros for a letter written by a lawyer, up to EUR 2,500 to EUR 5,000 for a | From EUR 3,000 up to EUR 3,600 (no court costs, based on two PDOs) | No general assessment; from EUR 7,000 to 18,000 for court cases for one product |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | court trial (even higher for long and complex court trial) | | |
| | **Public authorities** | Few hours per application | Few hours per application | Spanish case: estimated at EUR 128 for a new registration<br>French case: data to be provided | French case: 1.5 FTE to manage the scheme in national authority (EUR 93,000)<br>21-52 working days needed for a new GI (EUR 4,300 to EUR 10,700) | The costs of public authorities (EC and MS) are estimated at EUR 93 million, accounting for 0.12% of total sales value under GI/TSG<br>The costs for a new application for EC are at EUR 33,500 | No data available |

Details on costs for each protection system were integrated and presented in tables. As indirect costs were complicated to determine from the information gathered in the case studies, these costs were integrated in the other costs, as well as administrative burden expenses. A specific analysis was provided on cost incurred by public authorities for the different protection systems.

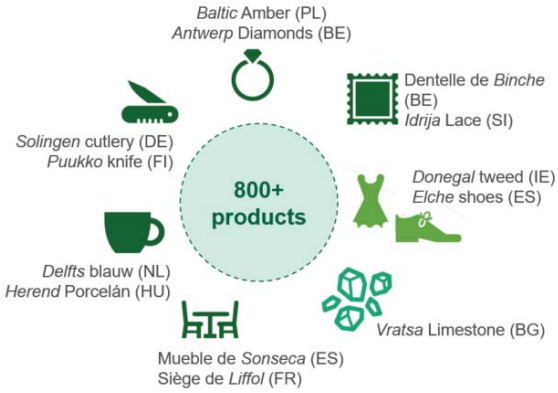
Next the study **identified and assessed the qualitative benefits** of the different protection systems for their users: the applicants.

As a final step of the methodological approach, the 2021 Study developed a **Cost-effectiveness analysis** to compare the costs incurred by producers, associations and authorities with the benefits provided. This ended up in a table Overviewing the costs and effectiveness of each protection system (see Study, Table 20, pages 91-92).

# ANNEX 5: CHARACTERISTICS OF REGIONS WITH GEOGRAPHICALLY ROOTED PRODUCTS

**More than 800 products with characteristics of geographical indications were mapped in two studies conveyed in 2013 and 2020**.[235] These products typically stem from the following eight sectors as shown in: porcelain, ceramics and glassware, apparel, natural stones, lace, jewellery, textiles, furniture and cutlery (see Figure 5.1).[236]

**Figure 5.1:** Type of GI products in the EU

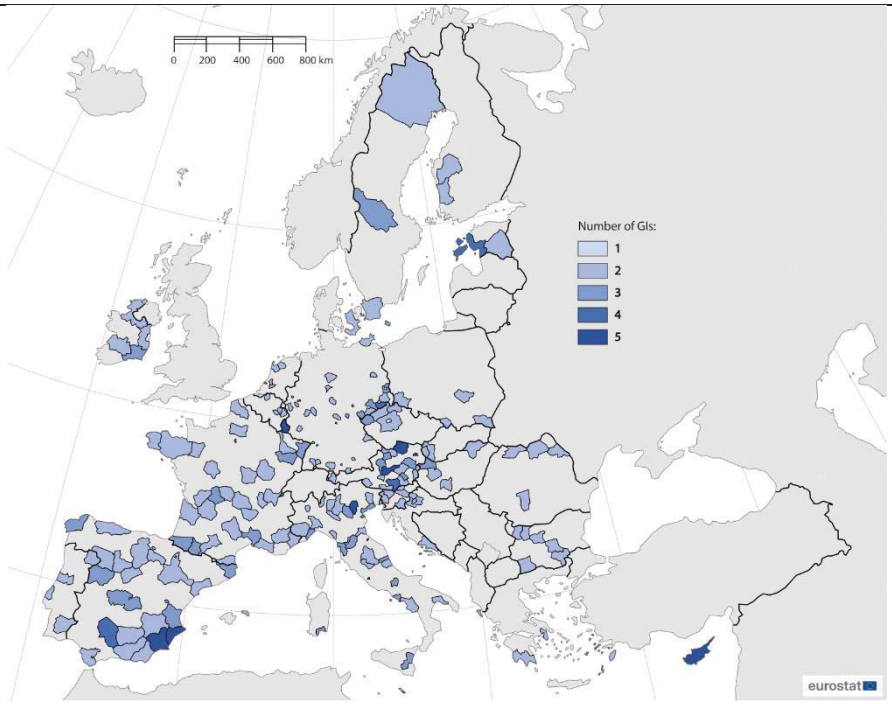



## Mapping products into regions

The Commission has carried out a mapping exercise of the 300+ geographically rooted products described in the VVA *et al.* (2020) study into the European regions (NUTS3 level) map. The objective is to uncover characteristics of the regions where these products are being produced.

Figure 5.2: Mapping of GI products into nuts3 regions

[235] Insight Consulting *et al.* (2013), supra note; VVA *et al.* (2020), supra note.
[236] Main product categories out of 322 products analysed under VVA et al (2020), supra note, page 18.




*Note:* The picture maps 300 craft and industrial products for which a complete set of information allowing for determining product features (e.g. name and description of the product, nature of territorial link, and information on producers) was identified in VVA *et al.* (2020).

*Source*: DG GROW analysis based on the product listed in VVA *et al.* (2020).

**Methodological process:** First, for geographically rooted products that are protected today under national *sui generis* GI protection regime, we use the geographical area as identified in the product specification. Second, for products that do not benefit today from a *sui generis* GI regime, we map the name of the relevant city or village. In cases where the name of the product includes a geographical region (e.g. Montafon table), we map the current location of production rather than the whole geographical region, as the later may be too broad. Finally, we map the products that are based on natural resources (such as stones) from the location of the mine(s).

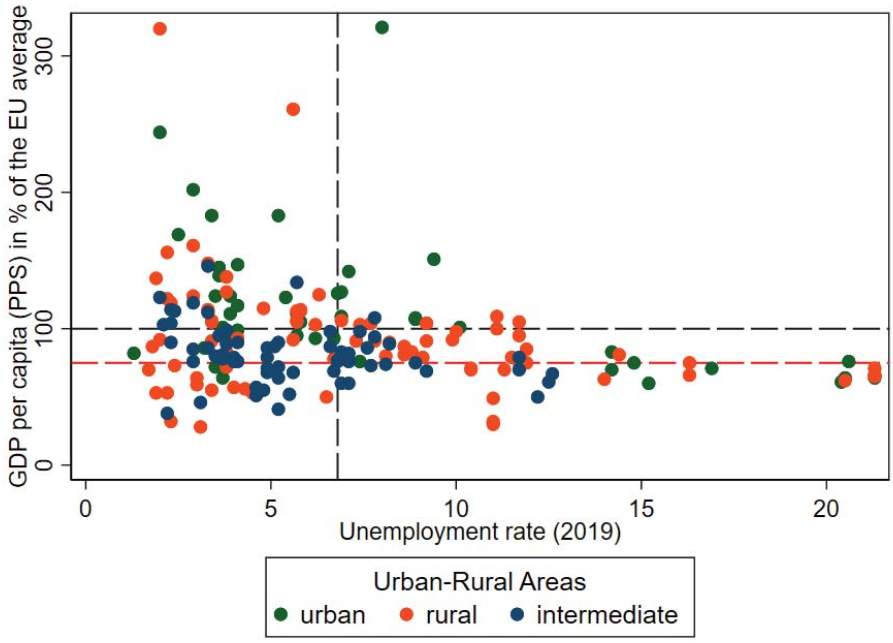
**Main trends characterising regions with CI geographical rooted products, including on tourism**

- Crafts and industrial GI products described in the VVA *et al.* (2020) are located in 197 NUTS3 level regions (see map in Section 2.1 and above).
- 66% can be defined as non-urban regions according to Eurostat methodology.[237]
- Figure A.5.1. below shows economic and labour market conditions in regions with GI products; 75% of the regions have either GDP per capita or unemployment rate below the EU average; and 30% are less developed regions i.e. regions with GDP per capita below 75% of the EU average.

[237] https://ec.europa.eu/eurostat/web/rural-development/methodology

- 45% of the regions with CI geographical rooted products have declining population measured as cure rate of total population change between 2010 and 2019.
- Finally, geographically rooted products are located in the regions with significantly higher vulnerability in the tourism sectors when compared to regions without geographically rooted products (see Figure A.5.2 below).
- The tourism vulnerability reflects the susceptibility of a region to be affected in case of shocks or disruptions in the tourism sector.[238] It is constructed as a composite index that takes into account the following regional characteristics calculated at NUTS3 level: tourism intensity (number of yearly nights-spent / number of residents), tourism seasonality (indicating the level of concentration of nights-spent in few months of the year) and share of foreign tourists.

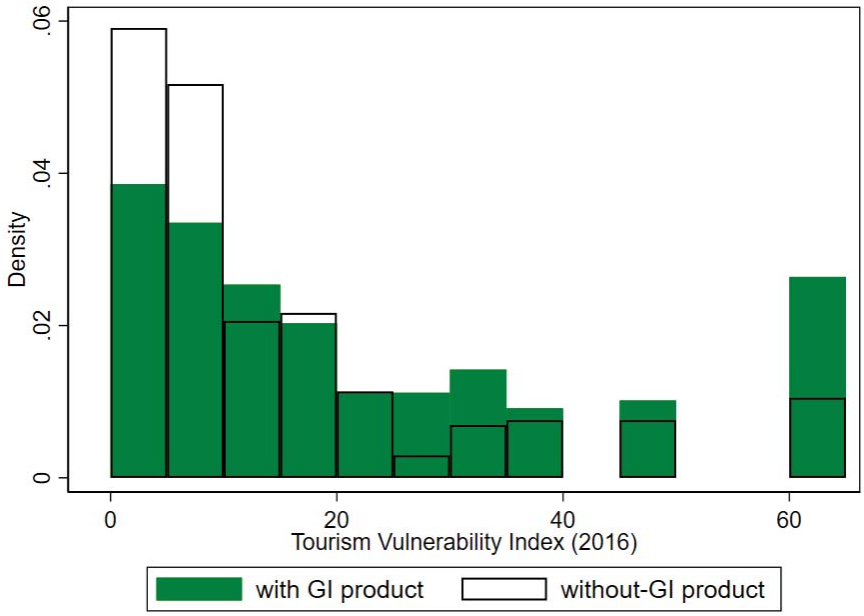
**Figure A.5.1.** Economic (2018) and labour market (2019) conditions in regions with GI products




*Source*: DG GROW calculations using Eurostat Regional Statistics. The vertical line indicates a 6.8 average EU unemployment rate as of 2019. The horizontal lines indicate the EU average GDP per capital (grey) and 75% of the EU average (red). Below the red line appear *less developed* EU regions.

[238] Measure of vulnerability in tourism sector as developed in Batista e Silva *et al.* (2019), *supra note*.

**Figure A.5.2.** Vulnerability in the tourism sector (2016)




Source: DG GROW calculations using data published in Batista e Silva *et al.* (2019).

# ANNEX 6: INTERNATIONAL DIMENSION

This Annex provides a more detailed description of the problems identified in section 2 related to the GI international context, the existing and future multilateral and bilateral agreements, including the recent EU's accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications ("Geneva Act"); and possible options and practical implementation of the preferred option as identified in Section 8 to address the identified problems.

## 1. Problem description: International dimension – Multilateral and bilateral agreements

### 1.1. Multilateral agreements

The two major multilateral tracks for GI protection are the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of the World Trade Organization (WTO), and the Lisbon system administered by the World Intellectual Property Organization (WIPO). The EU is member to the TRIPS Agreement (date of acceptance: 30 November 2007) and to the Lisbon system under the Geneva Act (date of accession: 26 November 2019, entry into force on 26 February 2020).

With regard to the legal instruments available at the international level, none of the international treaties that provide for the protection of geographical indications exclude from their scope craft and industrial products. The Paris Convention, the Lisbon Agreement and the TRIPS Agreement clearly apply to all kind of products. These treaties include different definitions of the appellations of origin (AO) and geographical indication (GI) (together "GIs") concepts. They also establish provisions with regard to the legal instruments that can be used for the protection of AOs and/or GIs, which are very diverse. Similarly, the scope of the protection granted to GIs differs significantly from one treaty to the other. The WTO TRIPS agreement provides the overall legal framework for the protection of GIs around the world; it includes derogations and limitations to GI protection, notably with regard to generic names and prior trade mark rights.[239]

As regards the TRIPS Agreement, members employ a wide variety of legal means to protect geographical indications, ranging from specific geographical indications laws to trade mark law, consumer protection law, and common law. The TRIPS Agreement and current TRIPS work in the WTO takes account of that diversity.[240]

Such flexibility is also characteristic of **WIPO's Lisbon system**, which facilitates the international protection of appellations of origin and geographical indications through one single registration procedure for a single set of fees in multiple jurisdictions.

[239] Study on Geographical Indication Protection for Non-Agricultural Products in the Internal Market (2013), p-12-13, https://ec.europa.eu/docsroom/documents/14897

[240] World Trade Organization – Briefing on Geographical Indications, https://www.wto.org/english/tratop_e/trips_e/gi_e.htm

The Lisbon system currently has a membership of 37[241], including the European Union and seven EU Member States (Bulgaria, Czechia, France, Hungary, Italy, Portugal and Slovakia). The Lisbon system is based on the Lisbon Agreement and its most recent revision, the Geneva Act of the Lisbon Agreement[242]. Both are administered by WIPO, the International Bureau of which keeps the International Register of appellations of origins/geographical indications and the "Lisbon Express" database allowing for search on international registrations.

The **Geneva Act** was adopted in 2015, aimed at the revision and modernisation of the Lisbon Agreement (1958) in order to help the system expand and obtain increased geographical coverage. The Geneva Act updates and enhances the existing international registration system through a number of changes.

The Lisbon Agreement applies only to appellations of origin – a special kind of geographical indication for products that have a particularly strong link with their place of origin. The Geneva Act extends protection to geographical indications[243] (GIs) alongside appellations of origin, to better take into account existing national or regional systems for the protection of distinctive designations in respect of origin-based quality products.

The Geneva Act also allows certain intergovernmental organizations (such as the European Union) to join, making the international system of protection more inclusive.

As to the extent of protection, Contracting Parties to the Act must provide legal means to prevent the use of an internationally registered AO or GI in respect of goods of the same kind, or goods that are not of the same kind, or services, under certain conditions. They must also provide legal means to prevent any use amounting to the imitation of an AO or GI.

The Geneva Act introduces several flexibilities into the Lisbon System. In addition to choosing how to meet the requirements of the Act through domestic law, each Contracting Party can make various optional declarations when it accedes to the Act. The Geneva Act leaves it to the signatory states to decide how the GIs are protected in their jurisdiction.

At the same time, the Geneva Act (like the Lisbon Agreement itself) offers a route to obtain protection of appellations of origins/geographical indications regardless of the nature of the goods to which they apply, including agricultural products, foodstuffs, wine

[241] Albania, Algeria, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cambodia, Congo, Costa Rica, Cote d'Ivoire (not yet in force), Cuba, Czechia, Democratic People's Republic of Korea, Dominican Republic, European Union, France, Gabon, Georgia, Ghana, Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Lao People's Democratic Republic, Mexico, Montenegro, Nicaragua, North Macedonia, Oman, Peru, Portugal, Republic of Moldova, Samoa, Servia, Slovakia, Switzerland, Togo, Tunisia

[242] Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications https://www.wipo.int/publications/en/details.jsp?id=3983

[243] A geographical indication means any indication protected in the Contracting Party of Origin consisting of or containing the name of a geographical area, or another indication known as referring to such area, which identifies a good as originating in that geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. (Article 2(1)(ii) of the Geneva Act)

and spirit drinks, crafts, industrial products and natural products. This is in contrast to EU legislation, where protection for GIs for CI products is not available.

1.2. The EU's accession to the Geneva Act

**The EU acceded to the Geneva Act on 26 November 2019** (entry into force on 26 February 2020). With a view to the EU's accession, the interface between current EU legislation on GIs and the international instrument was addressed by Council Decision (EU) 2019/1754 and Regulation (EU) 2019/1753. This new legislation was specifically adopted to regulate EU action following accession to the multilateral registration system.[244] Seven EU MSs were already party to the Lisbon Agreement before EU's accession to the Geneva Act. Some of them actually protect their GIs relating to CI products in the Lisbon system[245] and offer the same protection for other Lisbon members, thus creating an uneven level playing field among producers coming from different Member States. To address the fate of registrations relevant for these EU Member States, it was necessary to include complex transitional provisions for AOs originating in EU Member States and already registered under the Lisbon Agreement, contemplating various scenarios, essentially depending on the eligibility of the respective AO for protection under EU law. There are also rules for transitional protection for AOs originating in a third country and registered under the Lisbon Agreement before the accession of the Union to the Geneva Act.[246]

Notably, the ruling of the Court of Justice of the European Union (EUCJ) of 25 October 2017 (C-389/15, European Commission v Council of the European Union) clarified that the EU has exclusive competence for the Geneva Act since the revised Lisbon Agreement is covered by the EU's common commercial policy (trade aspects of intellectual property). The EUCJ found that it is essentially intended to facilitate and govern trade between the EU and third states and, secondly, that it is such as to have direct and immediate effects on such trade. To be able to exercise its exclusive competence in this domain, the EU had to accede to the Geneva Act.[247]

**Special legislation clarified that it is for the Commission to represent the EU in the Lisbon Union of WIPO. The Commission is also the Competent Authority designated by the EU responsible for the administration of the Geneva Act.[248]** In the latter capacity, the Commission has two roles.

First, it files international applications to WIPO's International Bureau to seek protection for registered EU GIs in third countries.[249] Member States may request the Commission

[244] Council Decision (EU) 2019/1754 of 7 October 2019 on the accession of the European Union to the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications; Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019 on the action of the Union following its accession to the Geneva Act of the Lisbon Agreement.
[245] Examples are: Senovski Kaolin (BG), Bohemia Crystal (CZ), Émaux de Limoge (FR), Monoï de Tahiti (FR), Herend (HU), Halas, Kiskunhalas (HU), Slovenskŷ opál (SK).
[246] Klaus Günter Blank: Multilateral Protection of Geographical Indications in WTO and WIPO. [2021] Int.T.L.R.,Issue 1, 2021Thomson Reuters and Contributors, p. 50. See also Articles 11 and 12 of Regulation (EU) 2019/1753.
[247] Klaus Günter Blank: Multilateral Protection of Geographical Indications in WTO and WIPO. [2021] Int.T.L.R.,Issue 1, 2021Thomson Reuters and Contributors, p. 49.
[248] Article 4 of Decision (EU) 2019/1754, Article 3 of the Geneva Act.
[249] Article 2(1) of Regulation (EU) 2019/1753.

to register in the International Register under the Geneva Act GIs that originate in their territory if these are protected and registered under EU law. Such requests can be based on a request by GI holders or their own initiative. This gives GI holders a lead role in deciding which GIs should be protected under the Geneva Act.[250] Nevertheless, such advantages are limited for holders of GIs relating to CI products, as the prerequisite for using the Lisbon/Geneva route is an existing registration at EU level.[251]

Second, as Competent Authority designated by the EU the Commission assesses third country GIs registered in the International Register to ascertain if they can be protected in the EU. Practically speaking, in all cases concerning GIs for CI products the refusal of protection is foreseen[252].

In this context, the consequences of the absence of EU-wide protection system for GIs for CI products are thus threefold:

- The EU cannot secure protection in third countries for GIs for CI products originating in the EU by means of using the Lisbon/Geneva route, as there can be no EU registration to start with.
- The EU has to refuse protection of GIs for CI products originating in third countries, as such protection is not available at EU level.
- There is an uneven level playing field for EU producers stemming from Member States that are not direct members of the Lisbon/Geneva route.

As a result, the lack of an EU protection system for geographical indications relating to CI products incur **reduced opportunities for producers of CI products originating in the EU to benefit from the EU's accession to the Geneva Act by means of obtaining protection for their GIs in third countries** using the Lisbon system.

In addition, it also triggers practical complications as to compliance with the obligations resulting from the Geneva Act, as **GIs relating to CI products originating in third countries cannot be protected in the whole of the EU** using the Lisbon/Geneva route without such protection being available at EU level.[253]

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[250] Klaus Günter Blank: Multilateral Protection of Geographical Indications in WTO and WIPO. [2021] Int.T.L.R.,Issue 1, 2021Thomson Reuters and Contributors, p. 49-50.

[251] As regards AOs for non-agricultural products originating in EU Member States already party to the Lisbon system under the Lisbon Agreement, Article 11(3) of Regulation 2119/1753 provides that existing registrations under the Lisbon Agreement may be maintained in the International Register. In the case of new registrations originating in an EU Member State party to the Lisbon Agreement, the Commission takes the role of Competent Authority towards WIPO, with the possibility for Commission intervention in the form of a negative opinion on a draft new application in exceptional cases.

[252] Articles 4(1)(b), 5(2), 6(1), 6(2)(e), 7(2) and 7(4) of Regulation (EU) 2019/1753.

[253] As to existing registrations protected by EU Member States already party to the Lisbon Agreement in their territories, Articles 12(3)-(4) provides for transitional protection of AOs relating to non-agricultural products originating in third countries. EU Member States in question can keep protecting third country non-agri GIs in their territory, under their sole responsibility. However, this has no effect on intra-Union or international trade.

1.3. Bilateral trade agreements

On the bilateral level, the EU negotiates and has already concluded a number of ambitious trade agreements that include comprehensive provisions on the protection of geographical indications as well as lists of GIs protected under the agreement. However, to date, the scope of protection for GIs in bilateral agreements is limited to GIs of agricultural origin. The **EU cannot grant protection of CI GIs via bilateral trade agreements** by means of including CI GIs in the list of GIs to be protected by such agreements, as protection of GIs for CI products is not available at EU level, contrary to agricultural GIs.

A number of most recently concluded bilateral agreements by the EU include, following requests of our trading partners, a reference under the GI provisions to a future possibility to consider widening the scope of protection of GIs, subject to legislative developments that create the legal basis for EU-wide protection of CI GIs. In some of these agreements, there is a list of foreign CI names suggested by our counterparts as potential candidates for future protection.

As shown in latest FTAs concluded by the EU, e.g. with Mercosur or Mexico, as well as in the EU-China GI Agreement, there are separate lists for CI GIs (not included in the annexes of protected GI names) and a provision in the Agreement referring to the future possibility of considering such names as potential candidates for protection in the event that the EU develops harmonised legislation on CI GIs. This illustrates that the EU is more and more confronted with requests from trade partners to recognise CI names in trade agreements. Furthermore, trade partners often ask for reciprocity when it comes to adding names to the initial GI lists protected under FTAs. Adding CI names could facilitate such reciprocity.

## 2. Options to address the identified problems

The EU currently remains unable to provide protection for CI products GIs to its own producers and to those from third parties in its *whole* EU territory in a *uniform* way. It is therefore key to explore which option(s) would best suit the purposes of de facto compliance with the requirements of the Geneva Act (i.e. providing protection to GIs for all products applied for registration in the Lisbon system by other parties to the Geneva Act).

The options outlined in the Impact Assessment relating to voluntary measures/recommendations or harmonisation would not result in any change in the existing EU legislation as regards the protection of CI GIs. By contrast, the remaining three options would imply the change in question in the existing EU legislation. These are:

- "The extension option": extending the GI protection system for agricultural products to GIs for CI products;
- "The *sui generis* option": creating a stand-alone Regulation to provide for *sui generis* GI protection for CI products;
- "The trade mark reform option": amending the existing EU legislation on trade marks to allow for protection of geographically rooted CI products.

Out of the above three options, the extension option and the *sui generis* option would result in the same situation from the perspective of the Lisbon system: the EU as a party to the Geneva Act would provide *sui generis* GI protection for all kind of products. By contrast, by means of the trade mark reform, the EU as a party to the Geneva Act would provide *sui generis* GI protection for agricultural GIs and trade mark protection for CI GIs.

As mentioned above in point 1, the Geneva Act leaves it open through which approach members provide GI protection. As Article 10(1) of the Geneva Act makes it clear:

*"Article 10*

*Protection Under Laws of Contracting Parties or Other Instruments*

(1) [Form of Legal Protection] Each Contracting Party shall be free to choose the type of legislation under which it establishes the protection stipulated in this Act, provided that such legislation meets the substantive requirements of this Act."

WIPO also explains this feature in the framework of general information on the Lisbon System:

"*One condition to register AOs/GIs internationally*

To qualify for international protection under the Lisbon System, AOs and GIs must be already protected as such in their Contracting Party of Origin, by means of either legislative or administrative provisions, judicial decisions or any form of registration. The Lisbon System leaves ample flexibility on how this protection may be formalized at the national or regional level, which is determined by the applicable domestic legislation of the Contracting Party of Origin (e.g. domestic protection may take place through *sui generis* or trade mark systems, special decrees, labelling or unfair competition laws etc.)."[254]

Nevertheless, at least **three factors weigh in favour of** providing protection by a ***sui generis*** GI law:

1. It is not clear how trade mark protection could possibly meet requirements of Chapter III "Protection" (Art. 9-14) of the Geneva Act, which practically set the criteria of a level of protection characteristic of *sui generis* GI regimes. It appears that at least two elements of the level of protection required by the Geneva Act would be problematic to include within the EU trade mark framework:

    - Article 11(2)

    *"[Content of Protection in Respect of Certain Uses]*

    Paragraph (1)(a) shall also apply to use of the appellation of origin or geographical indication amounting to its imitation, even if the true origin of the goods is indicated, or if the appellation of origin or the geographical indication is used in translated form or is accompanied by terms such as "style", "kind",

[254] Lisbon – The International System of Geographical Indications (wipo.int)

"type", "make", "imitation", "method", "as produced in", "like", "similar" or the like."

- Article 12

*"Protection Against Becoming Generic*

Subject to the provisions of this Act, registered appellations of origin and registered geographical indications cannot be considered to have become generic in a Contracting Party."

2. The EU is generally perceived as the champion of the sui generis GI regime in the international arena including WTO and WIPO. Many countries embracing a sui generis regime have taken the EU as a reference model, in particular given the very successful outcomes on GIs in EU's bilateral negotiations. At multilateral level (TRIPS/WIPO) the EU has consistently promoted the extension of a high level of protection to all GIs, beyond wines and spirits. It may therefore appear rather inconsistent with this well-established approach to divert from such standards in the case of CI GIs protection.
3. While not in principle excluded, it would appear inconsistent for the EU to provide one kind of legislation (*sui generis* protection) for agricultural GIs and another kind (trade mark protection) for CI GIs.

The above three factors narrow down the most suitable options to the option extending the GI protection system for agricultural products to GIs for CI products and the stand-alone *sui generis* scheme. As commented in the Impact Assessment, several factors weigh in favour of creating a stand-alone *sui generis* scheme. First, agricultural products and foodstuffs are different in nature to CI products. They do not require the same rules, in particular with regard to integration in the food sector and complexities of food processing and use of ingredients. In addition, the GI protection system for agricultural products is part of the common agricultural policy (CAP) which pursues specific objectives, in particular market and income support policies and which includes specific requirements notably for GIs in wine and other CAP sectors, as well as flanking policies aimed at protecting the natural resources or landscape of the production area or improving the welfare of farm animals that impact producers of food GIs.

Finally, the ongoing AGRI reform will uphold the specific GI requirements for wines and spirit drinks and hence maintain distinctive rules in the common market legislation for wines and in the spirit drinks regulation. The different forms of GIs will be maintained: 'protected designations of origin' and 'protected geographical indications' for Wines and for agricultural products and foodstuffs, and 'geographical indications' for spirit drinks. One of the current 4 schemes (aromatized wines) will be absorbed into the agricultural products and foodstuffs GIs under the 2021 CAP reform. For the other regimes, the streamlining of the four current separate GI schemes will focus on unified rules on protection, procedures, and to an extent on control and enforcement, in the sense of a single set of procedural rules. The fact that three protection schemes would remain (agricultural products and foodstuffs, wines, and spirits) could therefore additionally complicate their extension to CI products.

**In light of all the above considerations, the option of creating a stand-alone scheme providing *sui generis* GI protection for CI products is the most suitable option from**

**the international perspective. This option would not only secure the fullest possible compliance with the Geneva Act of WIPO's Lisbon Agreement. It would at the same time be fully consistent with the EU's position taken in WIPO and WTO in favouring the highest possible level of protection to be provided for all GIs.**

## 3. Practical implementation of the preferred option in the international context

With the introduction of a new *sui generis* GI scheme to protect CI products, there would be implications for the EU's GI regime in the international context. The preferred option would result in some changes as outlined below.

### 3.1 The EU as Party to the Geneva Act of the Lisbon Agreement

As noted above, the interface between current EU legislation on GIs and the international instrument is addressed by Council Decision (EU) 2019/1754 and Regulation (EU) 2019/1753, regulating EU action following accession to the multilateral registration system. With the establishment of a new EU GI scheme for CI products, such interface legislation calls for review at least as regards the following aspects.

In a nutshell, the major consequences of the introduction of EU level GI protection for CI GIs in the context of the Lisbon system are twofold:

- The EU would be able to secure protection for EU GIs in question in third countries using the Lisbon/Geneva route, as there could be an EU registration to start with.
- The EU would be able to offer protection of third country GIs in questions, as such protection would become available at EU level.

As noted above, the interface between current EU legislation on GIs and the international instrument is addressed by Council Decision (EU) 2019/1754 and Regulation (EU) 2019/1753, regulating EU action following accession to the multilateral registration system. With the establishment of a new EU GI scheme for CI products, such interface legislation calls for review at least as regards the following aspects:

- As it would become possible to file international applications to WIPO also in respect of CI products, **details as to EU Member States' requests to protect their GIs in the Lisbon system and the form of action taken by the EU to achieve an international filing need to be revisited**. (To which EU body such requests for an international application be addressed, and whether an implementing act would be necessary, are questions relating to the choice on the relevant EU body in charge, as discussed by the Impact Assessment and its Annex 10 in particular.
- It was a necessity for the Regulation to foresee that in all cases concerning GIs for CI products from third countries, protection should be refused. The current procedure needs to be remodelled in order to **replace the existing systemic refusal bar by a real and effective examination process** applying to CI products. Details relating to **relevant EU body in charge** are to be revisited as well.
- A further consequence of the introduction of new EU GI scheme would be related to the provisions on **"Subject Matter" of the Regulation**, which currently refer

only to EU titles in respect of the existing GI schemes for agricultural GIs.[255] Such references would need to be completed **to encompass the newly established EU GI scheme** on CI products.

- Similarly, the category of "non-agricultural GIs" (which is tacitly construed in various ways in the Regulation) may need revisiting, too. While non-agricultural or craft and industrial GIs are not explicitly mentioned as such anywhere in the Regulation[256], complicated tacit nuancing in its provisions did provide for the specific situation of these GIs. With the emergence of the new EU GI scheme, a simple positive reference to industrial and craft products may be preferable in cases where distinction in respect of these products remains necessary – for example, due to some differences in the applicable registration procedure relating to the EU body in charge.

Despite some amendments in the interface legislation, as also discussed further and in more detail in Annex 10, one key aspect would remain untouched:

- Special legislation has clarified that following accession, **the Union and any Member States which ratifies or accedes to the Geneva Act shall be represented by the Commission** in accordance with Article 17(1) TEU. The Union shall be responsible for ensuring the exercise of the rights and fulfilment of the obligations of the Union and of the Member States which ratify or accede to the Geneva Act. The Commission shall make all the necessary notifications under the Geneva Act on behalf of the Union and those Member States (Art. 4(1) of the Decision). It appears that no change is called for in this regard. The same **arrangement would automatically cover industrial and craft GIs** following from the adjustment of "Subject Matter" as discussed above.

3.2 The EU as negotiator of Free Trade Agreements

The EU attaches great importance to the protection of intellectual property rights at the international level. Regional and bilateral trade agreements concluded by the EU include comprehensive IPR chapters and provisions for the protection and enforcement of geographical indications rights, which are fully in line with EU GI rules. Some relevant data from a 2019 study on economic value of EU quality schemes, geographical indications and traditional specialities guaranteed include that agri-food and drink products whose names are protected by the European Union as "Geographical Indications" (GIs) represent a sales value of €74.76 billion. Over one fifth of this amount results from exports outside the European Union. Export of geographical indications: geographical indications represent 15.5% of the total EU agri-food exports. Wines remained the most important product both in terms of total sales value (51%) and extra-EU trade (50%). The U.S., China and Singapore are the first destinations for EU GI products, accounting for half of the export value of GI products. The EU has concluded

[255] Article 1(2) of Regulation (EU) 2019/1753: "For the purpose of this Regulation, the term 'geographical indications' covers appellations of origin within the meaning of the Geneva Act, including designations of origin within the meaning of Regulations (EU) No 1151/2012 and (EU) No 1308/2013, as well as geographical indications within the meaning of Regulations (EU) No 1151/2012, (EU) No 1308/2013, (EU) No 251/2014 and (EU) 2019/787."

[256] The Decision does not touch upon the issue of CI GIs at all.

more than 30 international agreements, which allow the recognition of many EU GIs outside the EU and the recognition of non-EU Geographical Indications in the EU. GIs play an increasingly important role in trade negotiations between the EU and other countries. The Commission also dedicates around €50 million every year to promote quality products in the EU and around the world.

The protection of GIs via trade agreements is an equivalent avenue to the protection of foreign GIs via EU GI regulations, since both achieve the same high level of protection, which is effective in the whole territory of the EU for the GIs listed in the FTA. For the time being this applies only to agricultural/food GIs and would leave CI GIs outside the scope of the negotiations.

Up to 2008 the EU action to improve GI protection in bilateral negotiations had concerned exclusively wine and spirits, in the so-called "old generation" agreements (beginning with Australia (1997), Chile (wine and spirits, 2002), South Africa (wine and spirits, 2002), Canada (wine and spirits, 2003) and the USA (wine, 2006).

Since 2008, the EU has progressively adopted a more comprehensive approach in negotiations covering GIs. The negotiations concluded by the EU with its neighbourhood countries provide for a very high degree of integration of the respective GI systems and have very high standards of approximation with the EU acquis on GIs (e.g. DCFTAs with Moldova, Georgia or Ukraine).

Comprehensive FTAs have been concluded with a number of key trading partners, like South Korea in 2010, followed by Peru/Columbia/Ecuador, Central America, Canada, Singapore, Vietnam or Japan, already in force; worth to mention the stand-alone GI Agreement with China, as well as FTA negotiations concluded with Mexico and Mercosur, and the on-going FTA negotiations with Indonesia, Chile, Australia and New Zealand.

All these agreements include comprehensive provisions on GIs and a list of GIs to be protected under the agreement.

The extension of GI protection to CI GIs at EU level would allow to include them in bilateral agreements of the EU with trade partners.

This would imply broadening the scope of GIs covered by the agreement and including CI GIs from both the EU and counterparts in the lists of GIs protected under the agreements.

# ANNEX 7: KEY DIFFERENCES BETWEEN *SUI GENERIS* GI AND TRADE MARK REGULATION

## A.7.1. Comparison of different IP tools

The EU trade mark system provides for EU trade mark titles as well as a harmonised regulatory framework for national trade mark titles. There are similarities between trade marks and geographical indications. Both have the function to protect names for particular products. Both need to be registered.

However, there are differences, in particular as to the nature of the rights. Whereas trade marks are private rights which can be transferred or licensed, GIs are public rights. Their rationale is protecting the collective asset represented by a product reputation embedded in and derived from a localized cultural heritage.[257] The reputational benefits of GIs accrue to all producers in the region. In contrast, the benefits of trade marks accrue either only to the individual right owners, or with regard to collective trade marks or certification marks only to those producers that are a member of the organisation that has registered the collective trade mark or respectively issued the certification mark.[258]

In addition, trade marks and GIs differ with regard to their functions. Individual trade marks guarantee the origin from a specific company, collective trade marks the origin from a member of an association which owns the collective trade mark. A geographical name can constitute, under certain circumstances, an individual or collective trade mark. However, in contrast to GIs, these trade marks types aim at indicating the commercial origin of a good or service, not the geographical origin.

Certification marks certify the compliance of a product or service with specific quality criteria. The EU certification trade mark does expressly not allow for certifying the geographical origin[259]. Indeed, this is different on the national level. As of January 2021, nine Member States have established national certification marks that can serve to designate geographical origin: Denmark, Ireland, Italy, Lithuania, Malta, Poland, Romania, Sweden and Spain.[260] However, such certification marks shall not entitle the proprietor to prohibit a third party from using in the course of trade GIs, provided that the third party 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.[261]

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[257] Addor, Geographical indications beyond wines and spirits, The Journal of World Intellectual PropertyVolume 5, Issue 6, p. 865.
[258] Economic Study 2020, p. 26.
[259] Article 83(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, *OJ L 154, 16.6.2017, p. 1–99.*
[260] 2021 Study on Monitoring and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU, p. 21.
[261] Article 28(4) of the Directive (EU) 2015/2436 to approximate the laws of the Member States relating to trade marks, *OJ L 336, 23.12.2015, p. 1–26.*

Furthermore, there are differences with regard to the scope of protection. In contrast to trade mark systems, GIs in *sui generis* systems are protected against any use or any evocation, even if it does not cause consumer confusion, and can never become generic.[262] Also, in contrast to GIs, the validity of trade marks can be conditioned on their use on the market. Trade marks need to be renewed periodically. The protection of GIs is not limited in time.

Overview:

| | Trade marks | | | Geographical Indications |
|---|---|---|---|---|
| Type | Trade mark | EU Collective mark[263] | EU Certification mark[264] | |
| Function | Guarantees the **origin from a specific company**. It distinguishes goods and services from a specific company from another's. | Guarantees the **origin from a member of an association** which owns the collective trade mark. It distinguishes the goods/services from a specific association from those of other undertakings. | Distinguishes goods or services that are **certified by the proprietor of the certification mark** from goods/services that are noncertified (for example in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics).<br>GIs cannot be registered as certification marks. | Identifies a product **originating from a specific place, region, or country**.<br>Its given quality, reputation or other characteristic is essentially attributable to its geographical origin. |
| Example | The name (word mark) and logo of a big coffee chain (figurative mark) distinguishes its goods and services from those of another coffee chain. | The collective mark "Genuine Bavarian Beer" helps distinguish the beer of the association of Genuine Bavarian Beer producers from beer producers from other areas. | Each producer or importer of coffee, chocolate, tea, honey, bananas or oranges can become a license holder of the "Max Havelaar" certification mark, provided they comply with certain conditions of trade and are prepared to submit themselves to control by the holder of the certification mark. | Only wine from the Bordeaux region can carry the name "Bordeaux". |

Resulting from their divergent nature and function, trade marks and GIs differ also with regard to the intensity of public intervention, especially with regard to verification, control and enforcement. Authorities are involved in all the GI systems when it comes to the definition of the origin link and the product characteristics (meaning they verify these definitions) but not in any of the trade mark-based systems, for which the criteria are defined by the owner of the mark. This difference plays a role especially if it is considered that GIs should not only be a private right but also carry an element of public

[262] Indications géographiques: le virus "générique", Audier, Propriétés Intellectuelles, Volume 8, p. 252.
[263] Art. 74ff. EUTMR, Art. 29 EUTMD.
[264] Art. 83ff. EUTMR, Art. 28 EUTMD.

interest.[265] Also, with regard to enforcement, public authorities play a more important role when it comes to GIs compared to essentially private trade mark enforcement.

### A.7.2. EU certification mark legal reform

**Nature and objective of EU certification marks**

Contrary to the TM Directive, the EUTMR does not allow for an EU certification trade mark to certify goods/services with respect to their geographical origin. This means that, although GIs can be protected as certification marks at MS level, this is not currently possible at the EU level.

The respective provisions currently read:

**Article 83 (EU certification marks)**

An EU certification mark shall be an EU trade mark which is described as such when the mark is applied for and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified. (…)

Hence, this option would require the current EUTMR to be changed and certification in respect of the geographical origin of goods/services allowed. Nevertheless, such a change in the EUTMR would inevitably mean that any geographically linked products (agricultural, CI, i.e. quasi GI) would benefit from such a change. This, therefore, might be seen as opening up the trade mark system to compete with the current agricultural GI system at EU level, or even diluting it to the extent that simple geographical terms (i.e. terms without any link to the quality or attributes of the product) could be protected on the same footing as GIs, if used in conjunction with a certification scheme of any kind. This should be seen as a risk.

Additionally, even if the EUTMR changes and the geographical ban is lifted, or the use of geographical terms is expressly allowed as in the case of collective marks, it has to be considered that the current state of trade mark law entails a prohibition on monopolising/acquiring exclusive rights on geographical names, especially those that are known or could be known in relation with certain products. This conforms with the current practice of the EUIPO, which has recently been confirmed by the EUCJ, whereby collective marks must be distinctive and must abide by Article 7(1)(b) regardless of the fact that there is a derogation permitted from pure descriptiveness under Article 7(1)(c). In a nutshell, this means that trade mark protection which gives an exclusive right to a particular sign would not be the appropriate means to protect purely geographical names by which GIs are to be known on the market. This is clearly supported by the main difference between the two systems – namely, the exclusiveness of the trade mark system is in contradiction to the GI system, which is inherently perceived as having a public domain character as the GI names are essentially linked to a specific region and are dependent on a specific link, and not to a proprietor. The GI rights, unlike trade marks, are not to be seen as exclusive rights which might be dispensed of by their proprietor.

[265] 2021 Study on GI enforcement, p. 13.

Should the change to the EUTMR take place, it is still necessary to analyse to what extent this change would fulfil the objectives of a GI system for CI products[266].

In setting up an EU level system for protecting geographically linked CI products, the objectives of a trade mark system must be compared/analysed against the objectives of a *sui generis* GI system.

The two systems are of a different nature and serve different objectives[(267)].

| | **Geographical Indications** | **EU Certification marks** |
|---|---|---|
| **Definition** | Name or indication which **identifies a product of a specific geographical origin produced by operators who have joined the GI scheme and are bound to adhere to the specification.** | Distinguishing goods or services certified by the proprietor from those that are not. |
| **Essential Function** | Geographical origin and compliance with a specification. | Compliance with a Certification Scheme. |
| **Geographical Terms** | Name must identify a product originating from a region having specific characteristics and include geographical terms but not always. | NO (at EU level). |
| **Right to Use** | Any operator complying with the specifications. Generic terms cannot be protected. | Certified Users<br>Bona Fide Third Parties*<br>**Not the Proprietor.** |
| **Generic use** | Protected against becoming a generic term. | Can become a generic term. |
| **Link with the environment** | GIs include:<br><br>Product specification with a description of the influence of the local natural factors/know how of producers in the local area on the final product, or product linked to the place of production by reputation (environmental link not always present).<br>This link, as well as the description of the product, are verified by a registering body. | No particular link with the environment required.<br>Regulations of use are to describe the use of a trade mark.<br>No specific qualities stemming from the link with the environment required.<br>A registering body (the EUIPO) does not verify the link or the description of the product as this is not part of the trade mark assessment. |
| **Control and verification of goods** | Control and verification mechanisms outside the producers' group. This includes certification or administrative enforcement by MS in the marketplace (in line with food law) and private and IPR mechanisms. | With the Proprietor. |

As is shown above, the current framework for EU certification marks is not a tool that would allow for GI protection. The most notable difference can be found in the most important objectives of GI protection: the link of the product with the environment/ geographical area, including its specific qualities stemming from that relationship, and the control/verification of the final product by an independent body[268].

[266] See, in general, Insight Consulting *et al.* (2013), p 87-91.
[267] Additionally, see Insight Consulting *et al.* (2013), p 44-46.
[268] See VVA et al (2020), supra note, p 14. *Sui generis* GI protection protects the use of GI on a product to indicate that the product comes from a specific territory and has specific qualities linked to that territory. Under a *sui generis* GI protection regime, the territory of production, the product's link to the territory (traditional skills/knowledge and/or local raw materials) and the specific product features are recognised by a public authority that also controls compliance with these criteria. Only producers whose products meet these defined criteria benefit from the protection and may use the geographical indication on their products.

In the event that the reform of the EUTMR goes ahead, to allow for the certification of geographical origin, this would not mean that an EU certification mark could be used to fulfil the role of *sui generis* GI protection. Namely, within the EUTMR process, the applicant is not requested to show the three basic identifiers of any GI product, these being 'quality (1a), reputation (1b) or other characteristics (1c) of the good [that] is essentially attributable (2) to its geographical origin (3)'. Certifying a geographical origin simply translates into 'good coming from (3)' without any additional value being set against this origin. As with agricultural GIs, this added value is what distinguishes GI products from products which are simply produced in a particular geographical area without owing any of its characteristics to this area (whether through the influence of the environment as natural factors and/or via traditional knowledge and skills as human factors).

The assumption that consumers are willing to pay a higher price is absolutely dependent on the premise of a guarantee of quality (independent/public verification of the geographical link) not attainable through a private (certification) scheme – as the one under the certification mark scheme would be perceived by the public.

Finally, regulating CI GIs differently to the current agricultural GI scheme available at EU level could be seen as undermining the EU GI scheme. Any product owing its qualities to the geographical area it comes from (be it natural and/or human factors, which might be decisive) should be regulated in the same manner/framework. Further fragmentation of GI protection, depending on the sector, would be detrimental to producers in their efforts to distinguish their products on the market on an equal playing field and, for example, benefiting from the use of GI logos and the promotion of GIs in general. It would also be detrimental to the consumer who would continue to experience difficulties in understanding different approaches, thus undermining their (informed) decision at the point of purchase. By regulating CI GIs via a trade mark scheme, these sectors would be unduly discriminated of all the benefits the current agricultural GI EU level scheme has provided for its users.

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Certification mark: a name or sign indicating that a product complies with certain standards. Compliance with the standards are controlled by the owner of the certification mark.

## ANNEX 8: OVERVIEW OF NATIONAL SUI GENERIS GI LAWS AVAILABLE FOR THE PROTECTION OF CRAFTS AND INDUSTRIAL PRODUCTS

A wide range of specific (*sui generis*) GI laws for the protection of craft and industrial (CI) products has developed at national level, in particular in sixteen Member States. These specific national GI laws at national level differ notably regarding their objectives, e.g. promotion or protection. Certain laws only define authentic products and refer producers to other legal means of protection available, i.e. unfair competition and consumer deception laws, trade mark law.[269]

Further aspects where these laws diverge include the scope of protection, procedures (e.g. application, opposition and registration), competent authorities, fees and controls. The requirements are so different from one country to the other that it is difficult for producers to secure protection outside of their country of origin.[270]

The following examples might illustrate these difficulties:

- A large majority of countries protect **goods** only. Estonia, Croatia and Latvia protect both goods and **services**.
- In all countries, except in Latvia, where there is no **registration** requirement, an application for GI protection must be submitted for registration, and the associated costs differ from one country to another. From the electronic survey carried out in a recent case study, it emerges that the **average cost** for registering as producers of GI goods and/or being recognised as legitimate beneficiaries of GI protection can vary from 130€ to 500€ but there are cases where expenses can rise up to 4000€ with recurring annual costs comprised between EUR 500 and EUR 1,500.[271]
- The majority of **competent authorities** in charge of the GI registration or protection for crafts and industrial products are the national IP Offices, however in some countries like Belgium and Germany, for example, a judge or an administrative authority (Ministry, or regional authority) is the competent authority[272].
- The **authorities in charge of verifying the compliance of the production process** with the established standards are also diverse ranging from an internal monitoring committee of the producers themselves (e.g. for the Halas Lace), to technical boards created by a municipality (like the Geographical Indication Committee of Idrijska Čipka)[273], to Independent external certification bodies (in the case of the Burgundy stone)[274]. There are several **types of applicants** recognised by the national provisions, such as an individual producer or a group of producers, a private

[269] Study on Geographical Indication Protection for Non-Agricultural Products in the Internal Market (2013), p. 49-55 https://ec.europa.eu/docsroom/documents/14897.
[270] Study on Geographical Indication Protection for Non-Agricultural Products in the Internal Market (2013), page 12, https://ec.europa.eu/docsroom/documents/14897.
[271] Case Study on National *Sui Generis* GI Protection of Non-agricultural Products (2021), p. 7.
[272] Study on Geographical Indication Protection for Non-Agricultural Products in the Internal Market (2013), p. 61 https://ec.europa.eu/docsroom/documents/14897.
[273] See VVA et al (2020), National *sui generis* GI protection of non-agricultural products Case study 4, p. 5
[274] See VVA et al (2020), National *sui generis* GI protection of non-agricultural products Case study 4, p. 7.

collective body, a government or local authority competent for the territory to which the geographical indication refers, an association of legal or natural persons, chambers, communes, larger local communities or State authorities. The same applicant is therefore not necessarily allowed to submit an application under all national legislations. Box below give a detailed overview of how Control system is organized under the French national sui generis system for CI GIs.

**Box 8.1:** Control under the French national *sui generis* system for CI GIs. [275]

An example of how control is performed for CI GIs can be found in the French national *sui generis* system for CI GIs. A producer may only use a GI if it is a member of the Defence and Management Body (DMB) for that GI and lists among the 'operators' in the product specification. A DMB represents the professionals concerned, draws up the specifications and ensures that they are respected, but also participates in the defence, promotion and development of the GI. Each DMB, by keeping an up-to-date control plan, partly contributes to checking that the producers properly implement the products specifications.

Independent and accredited[276] Conformity Assessment Bodies (CAB) carry out the controls. The French law does not determine the frequency of control. However, for products like Burgundy stones, controls take place every one to two years with the exception of stone mining where control takes place every three years. Producers can choose between two kinds of CABs: either an inspection or a certification body. The inspection bodies carry out the control operations and send their report to the DMB, which decides on measures to sanction in case of failure. The certification bodies decide whether to grant, maintain or extend the certification, as well as on measures sanctioning failures. Up to now, the French CI producers have opted to have their products control assessed by certification bodies.

The French Intellectual Property Office (INPI), which validates CI GIs, checks that CABs assesses (in accordance with the assessment rules defined in the specification) that the producers manufacture their products in conformity with the specification, and that the corrective measures (e.g. fines) and warnings, and exclusions of producers provided for in the specification are implemented as well. If a discrepancy is found, the DMB will invite the producer to comply. If they do not, they may be excluded from the DMB.

- Many national regulations do not foresee an **opposition** in the context of the registration procedure to allow interested third parties to give their opinion on the GI protection request. This is the case for example of the Belgian, Czech, Estonian, Hungarian, Slovak and Slovenian *sui generis* legal instruments[277].
- There are various requirements as regards the link with the geographical origin:

[275] See Article L-721-1 to L722-17 of the French Intellectual Property Code : Section 2 : Indications géographiques protégeant les produits industriels et artisanaux (Articles L721-2 à L721-10) - Légifrance (legifrance.gouv.fr)

[276] by a National Accreditation Body within the meaning of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93. In France this body is the Comité Français d'Accréditation (COFRAC) www.cofrac.fr

[277] Ibidem.

- Concerning the **nature of the link with the geographical origin**, the French law provides that, in addition to the quality, reputation and other characteristics, the origin link for CI products can also be based on traditional local know-how. Similarly, the Polish law specifically provides that the link between certain qualities of goods and their origin can be based on human factors. The Portuguese law provides that traditional crafts with a geographical reference may also be protected as a geographical indication, provided that it is a product of cultural importance that has the characteristics that give it its own identity and whose production proves to be of economic and social importance, translated into the number of workshops and artisans dedicated to this activity.
- Concerning **the place of production**, in some countries (e.g. Croatia, Czechia, Hungary, Estonia) the production, processing or preparation of the product has to take place within the defined geographical area. Other legislations (e.g. Slovenia, Slovakia) provide no specific rule concerning the fact that some of the production steps must take place in the geographical area concerned. In Poland, the production or processing steps, or both, must take place in the geographical area. The Polish law adds that geographical indications are also understood to mean indications used for goods that are produced from raw materials or semi-products originating in a given territory larger than the territory in which a good is produced or processed if they are prepared in special conditions and there is an inspection system in place to ensure that these conditions are met.

- In most countries, GIs are protected for an indefinite period of time, supposing the requirements for protection remain to be met. In Belgium and Romania, GIs are granted protection only for a period of 10 years and need to be renewed to remain valid.
- When assessing the GI application, in several Member States, such as Bulgaria, Czechia and Romania, a competent authority of the country must **certify the geographical area of production**. IP offices ask for a statement of evidence from state administration body in the relevant territory in which the product production, processing and preparation takes place. This statement certifies that the establishment is situated on the given territory and that the applicant produces or processes the products as an **official confirmation** that the applicant produces, transforms and prepares the relevant. The French *sui generis* legislation, however, foresees the use of **certification by a third party conformity body**, both for the verification phase (before the registration of the GI) and the control phase, to monitor that GI Producers continue meeting the GI requirements (every two years)[278].
- There are few "GI Registers" foreseen under the different national *sui generis* regulations identified, which makes it difficult to find clear lists or databases of GI craft and industrial products already registered in Member States. In almost all cases there are **systems in place to verify the quality of the products during the**

[278] Loi Française n° 2014-344, du 17 mars 2014 relative à la consommation.

**production phase**. However in certain cases such as the Vratsa Limestone there is no verification body at all.[279]

- When control exists, they can take various form:
    - a 'light' form with the premises of the producers being checked **before registration only** (e.g. for the ceramic of Faenza the local 'Comitato di Disciplinare' can request information, visit the production facilities -always with the consent of the owner-, visit the shops and areas of the production facilities opened to the public[280], and the Geographical Indication Committee checks first the quality of the Idrija Lace during the registration process whereas the lacemaker is not monitored after).
    - At the other end of the spectrum, under the French system, **regular controls** are conducted (e.g. in the case of Burgundy Stone: every year for the extraction sites and every three years for shaping sites). An independent and accredited certification body (the Conformity Assessment Body -see Box 4 for description-) runs the controls to monitor the compliance with the rules of production and the traceability system.
- The costs for controls vary too:
    - where controls are carried out on a regular basis like for Burgundy Stone, the costs of the controls both for the producers and for the control bodies is estimated[281] at 500€ per each control, plus 400€ every 2 years for mechanical tests. **Box 5** below provides details on the costs of controls under the French system.

**Table 6.6.1:** Overview of control costs (single producer) for CI products in France (2021)

| | Action | Cost without VAT |
|---|---|---|
| *Verification* | Drafting of the control plan | between EUR 1,100 and EUR 2,300 |
| | First certification assessment/audit | between EUR 350 and EUR 730 |
| *Control* | Follow-up audit | between EUR 290 and EUR 600 |
| *Other controls* | Additional controls * | between EUR 150 and EUR 1,000 |

*Notes:* * in the event of a serious violation of the specifications
*Source*: Association Française des Indications Géographiques Industrielles et Artisanales (AFIGIA).

The above table refers to the cost by producers of CI products protected under the French *sui generis* system where the control has to be performed by independent and accredited Conformity Assessment Body (see Box 4 for description). Drafting of the control plan and first audit costs between EUR 1,450 and 3,030 and reflects verification costs. The cost of follow up audit is between EUR 290 and EUR 600 to be covered every one, two or three years in case of stone mining (see Box 4).

[279] See VVA et al (2020), National *sui generis* GI protection of non-agricultural products Case study 4, p. 7.
[280] According to the competent authority, the procedure described in the Decreto Ministeriale 15 Luglio 1996 n. 506, art 1, available at: https://www.gazzettaufficiale.it/eli/id/1996/09/28/096G0521/sg[280] is 'not burdensome at all'.
[281] See VVA et al (2020), National *sui generis* GI protection of non-agricultural products Case study 4, p. 8.

- Where the monitoring is not conducted on a regular basis, costs are virtually 0 €.

- Downstream, when the product reach the market, there are **no formal monitoring activities** in place. These are **left to the individual producers** who conduct them 'informally' by monitoring the internet, checking who is selling what etc… Only one exception shows that the **Geographical Indication Committee of Idrijska Čipka** monitors the Idrija Lace market. The national trade inspection – independently or upon request of the Geographical Indication Committee or if a physical person filed a report- can control the use of the geographical indication. Controls are performed on-the-spot in shops. These are carried out randomly and occasionally, or performed after an infringement has been identified. In case of unrightful use of the indication, the Geographical Indication Committee revokes the right to use it for a period of one year. The costs of the monitoring are therefore very low or even close to zero. In their reply to the electronic survey, the producers of the French 'Porcelaine de Limoges' estimate they yearly expenses in approximately 1,000-1,500€. The cases of infringement are in any event extremely low. [282]

As a result of the existing fragmentation and legal patchwork of different rules and approaches in the Single market, a product covered by a geographical indication in one state might not be able to qualify for similar protection in another state. For example, artisanal woollen blankets created by using traditional local techniques could qualify for protection in France, Portugal or Poland, but would not be protected under legislations where human factors/traditional know-how are not accepted to establish the sufficient link between the product and its geographical origin. Diamonds, meeting standards regarding stone cutting but not originating from the region of production, may not be protected under legislations which require that raw materials must be local. In the case of furniture, an end product linked to a certain geographical place may not be protected if there is a requirement that all the production of the raw materials and the development or processing of a GI product have to take place entirely in the defined geographical area.

Finally, **Table A.8.1** below provides and overview of the IPR currently granted at national level to the names of the CI GI products in the EU-27.

It shows in particular that;

- CI GI names are protected under various national legal means including *sui generis* law, specific law / decree protecting a specific CI sector/product, and national certification mark aiming at certifying the geographical origin of a product
- The average time to complete registration in months varies significantly between Member States, with a minimum of 2 months in Lithuania to for example, a maximum of 12 months in Czechia.
- Application fees are charged in certain Member States while others do not. Except in cases where they amount to zero, there are in any event no two identical amount for taxes. The highest fee is €400. Certain Member States have additional taxes like the right to use (e.g. CZ) or registration (e.g. PL) tax.

[282] See VVA et al (2020), National *sui generis* GI protection of non-agricultural products Case study 4.

## Table A.8.1. Overview of national protection rules for GI products in the EU

| Member State | *Sui generis* GI law available for the protection of all CI GI products | Specific law / decree protecting a specific CI sector/product | National Certification mark aiming at certifying the geographical origin of a product | Num-ber of registrations | Staff (in FTEs or examiners) | Application fees | Average time to complete registration (in months) |
|---|---|---|---|---|---|---|---|
| Austria | | | | | | | |
| Belgium | X | | | | | | |
| Bulgaria | X | | | 13* | 7 | BGN 220 (± € 110) | 6 |
| Cyprus | | | | | | | |
| Croatia | X | | | 3 | N/A | HRK 300 (€40) + right to use HRK 400 (€53) | 10 |
| Czechia | X | | | 62 | 3 exam. (part time) | CZK 4,000 (± €158,50) | 6-12 |
| Denmark | | | | 0 | 0 | | |
| Estonia | X | | | | | | |
| Finland | | | | | | | |
| France | X | | | 12 | 1 | €350 | 8-10 |
| Germany | | X | | 1 | | | |
| Greece | | | | | | | |
| Hungary | X | | | 10 | 2 exam. (part time) | HUF 107,000 (± € 292) | 3-4 |
| Ireland | | | X | < 1 | < 1 FTE | €177 | N/A |
| Italy | | X | X | 22 | N/A | €337 | 6 |
| Latvia | X | | X | 0 | N/A | €150 + € 30 per add. class | 5,5 |
| Lithuania | | | X | 0 | 0 | €240 + € 40 per add. class | 2 |
| Luxembourg | | | | | | | |
| Malta | | | | | | | |
| The Netherlands | | | | | | | |
| Poland | X | | X | 0 | N/A | PLN 300 (± € 64) +1000 (± € 215,34) (Registration) | N/A |
| Portugal | X | X | | 27 | 3 | €254,98 (€127,50 online) | 4 |
| Romania | X | | | 0 | 0 | RON 1948 (€ 400) | 8 |
| Slovakia | X | | | 2 | N/A | € 0 | N/A |
| Slovenia | X | | | 2 | N/A | € 0 | N/A |
| Spain | | X | | 30** | N/A | €197.89 + €192.98 per add. class, (€253.21 + €164.03 online) | 10 |
| Sweden | | | X | N/A | N/A | SEK 2000 (±€ 200)+ SEK 1000 (±€100) per add. class | 3,8 |

(*) plus 19 for waters
(**) in the last five years

Source*: elaboration from the Commission services on the basis of Table 7 (by Insight consulting) of the 2013 Study*[283] *and information collected through questionnaires sent to Member States in July 2021.*

[283] i.e. 2013 GI Study, Table 7: List of countries where a national *sui generis* GI legislation exists p. 48.

# ANNEX 9: REGISTRATION PROCESS OPTIONS

## Introduction

The Impact Assessment identifies in Section 5, the setting up of a new, stand-alone *sui generis* geographical indication system at EU level for the protection of craft and industrial (CI) products (PO2). Various options are explored for a registration procedure to operate such new system. In addition, procedural elements are addressed in the context of the policy option of a possible trade mark reform (PO3). This annex presents registration process options in respect of both PO2 and PO3. It does not make any assumptions regarding the substantive aspects of any potential future legal instrument for CI products at the EU level. It focuses only on the procedural aspects.

This annex is structured as follows:

**Part A** contains a description of the methodology and analysis design, including concept definitions.

**Part B** contains exploration, analysis and assessment of six specific options for the GI registration/amendment procedure, with a particular focus on key advantages and identification of main risks, as well as on a customer-focused, effective, efficient, transparent, quality oriented, accessible and sustainable procedure/system. It also highlights several aspects related to the management of the GI eRegister.

**Part C** presents a comparison of the six options proposed in Part B.

**Part D** presents the existing procedural flow for **EU certification marks** and contains commentary focused on its possible application for the IP protection of CI products.

For the purposes of Parts A, B and C, the table below presents the key benefits sought for the main stakeholder groups considered.

| Benefits | Indicators |
|---|---|
| **For GI Applicants/Producer Groups**:<br>• Strengthen craft and industrial GIs as IPRs<br>• Give legal certainty<br>• Support businesses and innovation by allowing them to benefit from a modern, customer-focused, efficient, and effective GI registration system, with the possibility of amendments, and enforcement procedures for craft and industrial products | Perception of transparency<br>Satisfaction related to the processes and the added value<br>Accessibility of the GI system for craft and industrial products<br>Satisfaction with the quality of the registration procedure |
| **For Member States**:<br>• Strengthen craft and industrial GIs as IPRs<br>• Improve awareness of the value of IP<br>• Promotional tool<br>• Economic boost to regions/local communities<br>• Preserve local/traditional savoir faire<br>• Increase access to employment and promote staff retention (especially in rural areas) | Modern procedures<br>Perception of transparency<br>Access to information<br>Efficient procedures |
| **For COM/DG GROW**:<br>• Strengthen craft and industrial GIs as IPRs;<br>• Provide a sustainable procedure for registering GIs for craft and industrial products<br>• Provide a cost-effective procedure<br>• Provide a transparent and accessible GI system for craft and industrial products | Well-functioning, customer-focused, effective, efficient, transparent, delivering quality outputs, sustainable GI system integrated within the broader IP System for craft and industrial products |
| **For the EU AGENCY**:<br>• Strengthen craft and industrial GIs as IPRs<br>• Interlink various IPRs for an overall better protection of IPRs at the EU level<br>• Offer integrated, efficient, and quality services in support of innovation, businesses, and Member States, as well as producer groups and citizens in the EU.<br>• Improve service to IP stakeholders | Efficient procedures<br>User satisfaction with the quality of the registration procedure outputs<br>Perception of transparency<br>Perception of consistency<br>User satisfaction with the overall registration experience |
| **For EU Citizens (Consumers)**:<br>• Raise awareness on craft and industrial GIs<br>• Help inform buying decisions<br>• Provide a guarantee of authenticity | Perception/Awareness |

## PART A: Methodology and Analysis design

### PROBLEM FRAMING AND METHODOLOGY

For craft and industrial products, instruments to protect the use of geographical indications do not exist at EU level, and implicitly no GI registration/amendment procedure exists at EU level.

Each procedure included in this analysis is presented by means of a process flow diagram consisting of the following elements: stakeholders (roles or owners of a specific activity), activity lanes, a trigger (element that triggers a specific action), activities undertaken by the roles considered (in dark blue), decision points (diamonds) and output of an activity (green/black rectangle), and an output that triggers another flow (grey shape). The sequence of steps included in the diagram is represented by arrows.

A number of indicators have been proposed to quantify the expected benefits. These have been detailed for the following four main stakeholders actively involved in the registration process: the producer groups (PGs), the European Commission (COM), the Member State (MS) bodies responsible for managing the GI dossiers, an existing IP agency (the EUIPO), hereafter called the AGENCY.

Throughout this document, an application for a GI registration/amendment is understood as a pack of documents presenting sufficient information for a decision granting the EU protection for the respective craft and industrial GIs to be taken. There are three main elements: the single document (a summary of the information detailed in the product specification); the product specification document, mainly based on the description of the object of the GI registration, and finally, documentation related to the identification of the PG. This set of documents is equivalent to the requirements of the current EU-level GI protection for agricultural products.

The benchmark for all target value proposals consists in the Annex 11 to the SWD Impact Assessment of the [agricultural] Geographical Indications system[284], the latter having been benchmarked against average values across the EU IP Network members (the EUIPO and the national MS IP Offices for TMs). The values in absolute figures are not binding but, for the comparative analysis, the relative difference among the various options is considered. Also, a particular consideration is to be given to the scenarios built on the basis of the assumptions stated for each indicator and option, as they are the basis for the relative difference between the scores awarded to each of the quantitative benefits.

The measurement of the length of the procedure between different steps of the flow is done by means of average time and/or by comparing the performance against a set target. In this document, performance is defined as the time needed to handle all the pending cases. No target value is suggested for indicators measuring the length of procedures that are not under the full control of the public body. For example, no target time to register all GI applications is included since the time needed to close oppositions or appeals is

[284] Annex 11: GI registration process options, impact assessment accompanying the Regulation (COM(2022) 134 final) on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products..

heavily influenced by the opponent's responses. Nevertheless, average time estimations are included in the analysis.

The indicators are customised to each of the procedure options considered. The impact of the changes on the performance of the GI registration procedures is presented by specifying a proposed target value, always considering the assumptions listed for each of the options, or assumptions that are valid for several procedural options.

The advantages and risks identified for each of the options are presented mainly from the perspective of the consumers, the PGs, the MS, and the EU body involved directly, or which is affected by the procedure option in discussion in the respective section of this document.

**ANALYSIS MODEL**

Currently there is no GI registration procedure for craft and industrial products at EU level. Though some MS currently have a national *sui generis* GI registration system in place or provide protection to geographically linked craft and industrial products by means of collective or certification trade marks, the system in the Single market is fragmented and not harmonised. Considering these aspects, the analysis model is designed by looking at the desired characteristics of a potential future procedure option for the registration/amendment of craft and industrial GIs at EU level, which should be:

- Customer focused
- Accessible
- Predictable
- Easy to comply with/understand or respond to requirements (the application dossier is of good quality)
- The output of the examination/scrutiny process is of good quality (consistency, clarity)
- Transparent
- Efficient (in terms of costs and length of procedures)
- Offers a good balance between the advantages and risks associated with the respective procedure in discussion.

Each of the attributes are going to be detailed and quantified through a number of indicators as presented below.

A 3 year transition period is included. All projected values in the tables in this document are at T0 + 3 years, where T0 is the date of entry into force of the legislative act enabling the protection of craft and industrial GIs in the EU.

The selected indicators can be measured in percentage values, duration of time (e.g. months or years), or a qualitative assessment on a scale from 1 to 5, where 1 is awarded for a basic, minimal, manual process, covering the basic needs, while at the other extreme, 5 is awarded if a process is optimally automatised and built according to the latest best practices in terms of quality management, customer oriented, technology available, or environmentally sustainable standards.

A very important aspect of this analysis consists in the assumptions used for estimating the expected evolution of the indicators. These are listed throughout this document and are summarised in the Analysis and Comparison of the Options section.

The following indicators are selected:

1. Customer-focused procedure

| Indicator |
|---|
| **Modern, scalable, and customisable procedure** |
| **Level of the PG/MS' satisfaction with the front and back office processes, including tools** |
| **Level of satisfaction with the overall registration procedure** |
| **Services characterised as 'customer-centric'** |

2. Accessible procedure

| Indicator |
|---|
| **Availability of the procedure-related information using appropriate channels and formats** |
| **Comprehensibility of procedure-related information by a non-specialised public (derivative material)** |
| **Customised support available when filing the application** |
| **User-friendly and easy-to-use application filing step** |
| **Customised support available throughout the registration procedure** |
| **Perception of simplicity and easiness to understand and respond to the process and requirements** |
| **Procedures characterised as 'accessible'** |

3. Predictable GI registration procedure

| Indicator |
|---|
| **Perception of the predictability of the duration of the procedure** |
| **Applicants have access to relevant information regarding the status of their application** |
| **Level of satisfaction with the predictability of the registration outcome** |

4. Quality of the application

| Indicator |
|---|
| **Formalities deficiency rate (completeness of the file)** |
| **Link description deficiency rate (the link to the geographical area is not sufficiently described)** |
| **Product description deficiency rate (the product is not correctly/sufficiently described)** |

5. Output quality of the GI application assessment

| Indicator |
|---|
| **Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment** |
| **Level of satisfaction with the consistency of the outcome of the GI application assessment** |
| **Level of the PG/MS' satisfaction with the clarity of the observations communicated to the applicant** |
| **Level of the PG/MS' satisfaction with the overall registration procedure** |

6. Transparency for the MS and PGs, while the dossier is scrutinised at EU level

| Indicator |
|---|
| **Level of satisfaction with the information received on each dossier** |
| **Level of satisfaction with the quality of the information on the latest changes to scrutiny practice** |
| **Level of the satisfaction with the MS engagement in the decision-making process at the EU level** |

7. Efficient GI registration procedure

7.1 Timeliness of the procedure

| Indicator |
|---|
| **Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions)** |
| **Number of deficiency letters sent per file** |
| **Time taken to send the first letter of observations following the assessment of the craft and industrial GI application files. This action can be performed by the MS, the COM or the AGENCY, as described in each of the options considered in this analysis.** |
| **Time taken to register – all cases (EU level)** |
| **Time taken to register – all cases (MS+EU level)** |
| **Level of the PGs satisfaction with the duration of the registration procedure** |

7.2 Cost of the procedure

Throughout this document, it is implied that the organisation assuming the role of keeping the EU register of GI for crafts and industrial products will also play the role of competent authority for the Lisbon agreement. In terms of costs, it is assumed that the same amount of resources will be used for dealing with the international dossiers either in the COM or in the AGENCY, therefore they are not considered in this analysis. Regarding potential IT costs, at this stage it is impossible to estimate the costs of using an IT system for dealing with international craft and industrial GI dossiers, therefore these costs are not considered either.

| |
|---|
| **Costs for the PG: application fee at MS level if applicable**<br><br>**MS control fees if applicable** |
| **Costs for the PGs: application fees at EU level** |
| Costs (in full-time equivalents (FTEs)) for the COM: the time needed to perform the tasks described in the flows for each of the options proposed. The estimations of resources (FTEs) needed for performing the tasks are benchmarked with similar flows included in the Annex 11 of the Commission Staff Working document[285]. The following assumptions are considered for all options:<br><br>- Approx. 20 FTEs/year were needed to handle 800 agricultural GI dossiers (applications and amendments) between 2018 to 2020[(286)].<br>- The expertise in handling GI applications is available to DG GROW[287]. |

[285] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[286] Ibidem 2.
[287] This analysis does not include the effort and costs dedicated to capacity building within DG GROW but is under the assumption that such expertise becomes available to DG GROW. There are several possibilities for ensuring or progressively building expertise in DG GROW, to be explored at the appropriate moment. For example: the expertise could be made available by means of an exchange of

- Estimated number of incoming applications during the first 3 years since the entry into force rounded to 800[288].
- The majority of these applications are filed within 3 years from when the regulation enters into force.
- Monetary cost of the EU level dossier management is estimated to be similar to the agricultural GI files.

**Costs (in FTEs) for the AGENCY: in particular IT and Operations resources are envisaged, with the corresponding proportional overhead costs.**

Costs for the MS: a questionnaire was launched to the MS for the purpose of this exercise during summer 2021. Considering the answers received, two possible scenarios have been identified:

- MS where there is an existing infrastructure in place[289],

- MS where there is no infrastructure[290] in place for granting GI protection for craft and industrial products[291].

For the purpose of this analysis, the relative difference between the costs for the MS depending on the procedure options presented in this paper, are considered. Due to a lack of data, the absolute values for each individual MS are impossible to estimate, nor are they relevant for the purpose of comparatively assessing the procedure options proposed.

The typical costs for the MS scrutiny step consists in the cost of the resources used for handling the applications for the GI registration for crafts and industrial products, covering the full lifecycle of such an application: pre-application (providing support and guidance to applicants for completing the application dossier; the assessment step including the handling of an opposition phase if applicable, and the publication in a register; and the post registration phase, addressing modifications of the dossier if applicable; and liaising with an EU body (COM or AGENCY) for the EU level part of the registration procedure.

In the case of a MS where no infrastructure exists whatsoever, it is implied that the size of the structure can be determined by benchmarking it with other MSs expected to receive a similar number of craft and industrial GI applications. Alternative options are presented in this document[292], the costs of which are assumed to be comparable/not higher than the cost of the scenario where a MS creates a designated organisational structure of a size that is proportional to the expected number of applications for the protection of the geographical indication for craft and industrial products.

Additional costs may be incurred by the COM/MS during the first 3 years from the moment of the entry into force. These costs would be in the form of time spent by staff on the following type of tasks:

- Liaising with the COM/MS on existing and potential files.
- Training staff on the new procedures.
- Building organisational knowledge and build consistent practices.

experts, or by shadowing DG AGRI / AGENCY staff in handling agricultural GI files and adapting the procedures, etc.

[288] See Study on geographical indications protection for non-agricultural products in the internal market, 2013, p. 31.

[289] For example: FR, PL, CZ, HR, HU, IT, SI, BG, PT, RO.

[290] Member states where offering the possibility that geographical indication is protected by means of certification TMs are considered as having no existing *sui generis* infrastructure in place.

[291] For example: IE, LT, ES, LV, SE, DK, DE.

[292] See introductory part of the ANALYSIS section.

- Building methodologies, processes, registries, and tools, including templates, etc.

It is assumed that GIs expertise in craft and industrial products is available in the MS, and the efforts considered for each option include building knowledge and consistency of practice for the EU-level protection of the craft and industrial GIs[293].

Either the COM or the AGENCY will assume the role of competent authority in the sense of the Lisbon Agreement, as proposed in each of the procedure options presented below. This will have an almost negligible differential impact on the cost of the MS scrutiny or consultation part of the procedure.

Considering all the above, the ANALYSIS section of this document considers the

- Cost of the MS Scrutiny step for all options where a MS Scrutiny step is part of the EU GI registration procedure (options 1.0 to 1.3)
- Cost of the MS Consultation step for option 1.4, which is considered to be lower than the Cost of the MS Scrutiny step, considering that the formalities and initial liaison with the applicant is handled by the AGENCY.
- The cost for the MS is considered to be 0 in the case of option 1.5, considering that the MS is not participating in the GI registration process.

## 8. Key advantages and main risks

The key advantages and main risks will be identified and listed for each of the options analysed. Following stakeholders are considered for this exercise: Consumers, PGs, MS, and EU BODY (COM or AGENCY).

[293] Even if such knowledge exists in relation to agricultural GIs, it is presumed that knowledge sharing between different national institutions will be possible.

## PART B: Analysis of sui generis GI EU level procedure options

Six *sui generis* procedure options for registering a craft and industrial GI are proposed for the purpose of this analysis, numbered 1.0 to 1.5. The analysis model described in the previous section is applied for each of the options considered, and the selected indicators are provided with estimated target values, considering the generic and specific assumptions listed for each of them. The corresponding agricultural GI option used as benchmark is mentioned as well for each of the GI procedure options for craft and industrial products[294] discussed in this analysis paper.

Another aspect to be considered is the choice of competent authority for the Lisbon agreement; this role could be played either by the AGENCY or by the COM. Throughout this document, for consistency reasons, it is implied that the organisation assuming the role of keeping the EU register of GI for crafts and industrial products will also play the role of competent authority for the Lisbon agreement. In terms of costs, it is assumed that the same amount of resources will be used for dealing with the international dossiers, therefore they are not considered in this comparative analysis. Regarding potential IT costs, at this stage it is impossible to estimate the costs of using an IT system for dealing with international craft and industrial GI dossiers, therefore these costs are not considered either. Advantages of choosing between the AGENCY or the COM to play the role of competent authority are discussed in the respective sections.

| **COM** | **AGENCY** |
|---|---|
| Resources for reaching an outcome of the scrutiny of the application | Resources for reaching an outcome of the scrutiny of the application |
| Lengthier GI registration procedure by means of an Implementing Regulation | Shorter GI registration procedure by means of registration certificate |
| Resources for building and maintaining knowledge on WIPO files | The AGENCY can reuse the experience and contacts it has with WIPO if acting as competent authority for the Lisbon agreement |
| Lengthier GI registration procedure due to there not being an automated handling of WIPO files | Possibility to reuse, at least partially, the AGENCY's TM and Designs automated flows and processes for both inbound and outbound GI dossiers in relation with the WIPO |

[294] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.

### *1. Option 1.0 [MS/EU] MS → COM Decision*

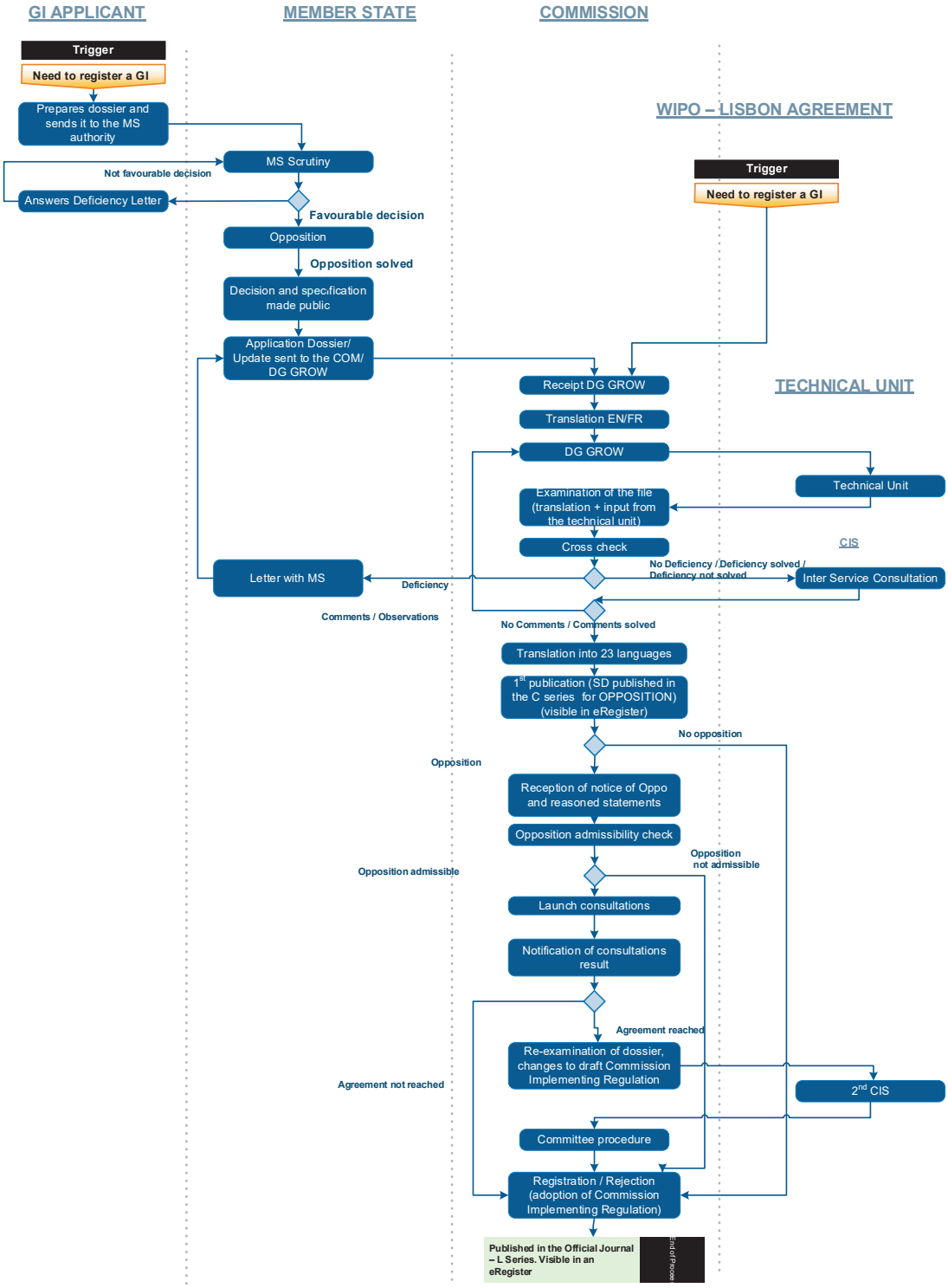
MS Level scrutiny; EU-level assessment, opposition, and decision on registration with COM

Assumptions:

1. A structure/team/network of available resources will have to be created in DG GROW to assess the application files, liaise with the MS to remedy any potential deficiencies of the dossiers, take a decision and create the legal instrument for the GI registration (e.g. implementing regulation as in the case of agricultural GI). This structure does not exist currently in DG GROW.
2. A flow similar to the agricultural GIs, in particular the Inter Service Consultation, input from the technical unit and the implementing regulation as a means to enter into force/registration of craft and industrial GIs is assumed to be created. Note: currently the mentioned flow does not exist in DG GROW.
3. Customised eAmbrosia[295] will be used for craft and industrial GIs. Note: this tool is currently used for the agricultural GIs and will have to be customised for the craft and industrial GIs. Currently there are no IT resources available for this purpose in DG GROW.
4. The existing IT team in the COM could take over the customisation of the eAmbrosia tool to accommodate the handling of the craft and industrial GI applications. Estimated implementation time until functional: minimum 1 year. In the meanwhile, many of the improvements planned for agricultural GIs would be put on hold and the GI process for craft and industrial products will be kicked off with manual forms.
5. COM is the competent authority for the Lisbon agreement[296].

[295] DG AGRI Tool for management of GIs and communication with MS.
[296] More details in the introductory part of the ANALYSIS section.

SUI GENERIS 1.0 MS -> COM DECISION




V.01 05.07.2021

1. Customer-focused procedure

The below scores awarded to the selected indicators for this characteristic, are based on the following assumptions (Benchmark agricultural GI - Baseline with IT improvements[297]):

- eAmbrosia (DG AGRI GI front and back office tool) will have to be customised to be able to accommodate craft and industrial GI dossiers and tasks and flows and procedural matters. Until this customisation is ready to be used, the process will be kicked off with manual forms and processes.
- Currently eAmbrosia is not used by all MS, and not for all types of agricultural GIs. It would be mandatory for craft and industrial GIs.
- 6 FTEs in DG AGRI handle the maintenance and improvement of eAmbrosia and no additional resources are expected to be required.
- Currently, for agricultural GI dossiers, the PGs do not have access to the registration journey through any IT tool, but they are informed/notified by the MS.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Modern, scalable, and customisable procedure** | 1/5 |
| **Level of the PG/MS' satisfaction with the front and back office processes including tools** | 40 % |
| **Level of satisfaction with the overall registration procedure** | 50 % |
| **Services characterised as 'customer-centric'** | 1/5 |

2. Accessible procedure

The below scores awarded to the selected indicators for this characteristic, are based on the following assumptions (Benchmark agricultural GI - Baseline with IT improvements[298]):

- High-level process description would have to be available publicly.
- Webinars and presentations would have to be organised for the MS.
- Promotional material would have to be available on DG GROW website.
- Several follow-ups may be needed with the MS, especially until a consistent practice is built.

[297] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[298] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.

- Information on a GI dossier, while scrutinised at the EU level, would have to be available in the back office tool to the MS only; the PGs are informed/notified by the MS.
- COM staff (e.g. country rep/point of contact) would have to be available to discuss the status quo of dossiers via email, face to face, or side conversations, as the need arises.
- Understanding and practice would be built progressively during the first 3 years.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Availability of the procedure related information using appropriate channels and formats** | 1/5 |
| **Comprehensibility of procedure-related information by a non-specialised public (derivative material)** | 1/5 |
| **Customised support available when filing the application** | 1/5 |
| **User-friendly and easy-to-use application filing step** | 1/5 |
| **Customised support available throughout the registration procedure** | 3/5 |
| **Perception of simplicity and easiness to understand and respond to the process and requirements** | 2/5 |
| **Procedures characterised as 'accessible'** | 1/5 |

3. Predictable GI registration procedure

Assuming that:

- The date of or delay until the next action from COM is not predictable due to possible political implications.
- MSs have access to the status of their application in eAmbrosia.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Perception of the predictability of the delay of the procedure** | 1/5 |
| **Proactive information of the applicants** | 1/5 |
| **Level of satisfaction with the predictability of the registration outcome** | 1/5 |

4. Quality of the application

Assuming that (benchmark with agricultural GI Baseline with IT improvements option)

- The completeness and correctness of the file depends on the amount of time and effort invested by the COM in making the requirements easy to understand and to comply with, and/or by using mandatory requirements in the front office tool (eFilling form), e.g. it is mandatory to attach a product specification document, or it is mandatory to attach a declaration of compliance, it is mandatory to complete the address of the applicant, or it is made mandatory to add a link to a register, etc.
- Agricultural GI benchmark: link description deficiency rate projected at 50 %

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Formalities deficiency rate (completeness of the file)** | 10 % |
| **Link description deficiency rate** | 50 % |
| **Product description deficiency rate** | 20 % |

5. Output quality of the GI application assessment

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment** | 60 % |
| **Level of satisfaction with the consistency of the outcome of the GI application assessment** | 50 % |
| **Level of the PG/MS' satisfaction with the clarity of the observations on the application file sent to the MS** | 80 % |
| **Level of the PG/MS' satisfaction with the overall registration procedure** | 70 % |

6. Transparency for the MS and PGs, while the dossier is scrutinised at EU level

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of satisfaction with the information received on each dossier** | 50 % |
| **Level of satisfaction with the quality of the information on the latest changes to scrutiny practice** | 50 % |
| **Level of the satisfaction with their engagement in the decision-making at EU level** | 60 % |

7. Efficient GI registration procedure

7.1 Timeliness of the procedure

The estimated values for this option are considered in corelation with the below assumptions, and that may imply that a transition period will have to be allowed before these values can be confirmed (Benchmark agricultural GI - Baseline with IT improvements):

- The expertise in handling GI applications is available to DG GROW[299].
- Number of deficiency letters sent per file: 2-6

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions)** | 10 months |
| **Number of deficiency letters sent per file** | 4 on average |
| **Time taken to send the first letter of observations** | 4 months |
| **Time taken to register - all cases (EU level)[300]** | 3 years on average |
| **Time taken to register - all cases (MS+EU level)[301]** | 5 years on average |

[299] This analysis does not include the time dedicated to capacity building within DG GROW but is under the assumption that such expertise becomes available to DG GROW. In the contrary, all the above estimates on the timeliness of the procedure should be doubled at least.
[300] Benchmark agricultural GI estimated procedures, see Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[301] Ibidem 16.

| | |
|---|---|
| **Level of satisfaction with the duration of the registration procedure** | 50 % |

7.2 Cost of the procedure

The following assumptions are considered:

- The same amount of resources is required as for the agricultural GI procedures (800 agricultural GI dossiers (applications and amendments) between 2018 to 2020 required 20 FTEs a year approx.)[302].
- The expertise in handling GI applications is available to DG GROW[303]
- Estimated number of incoming applications rounded to 800[304]
- The majority of these applications are filed within 3 years from when the regulation enters into force.
- Monetary cost of the EU level dossier management is estimated to be similar to the agricultural GI files.
- This option assumes that the incurred costs will be borne by the COM, contrary to options 1.2, 1.3, 1.4, 1.5, where an existing IPR agency (the EUIPO/AGENCY) will be able to absorb the effort necessary to process the applications by using existing resources, in particular IT and Operations resources, with no impact on the COM's budget.

The typical costs for the MS scrutiny step consists in the cost of the resources used for handling the applications for the GI registration for crafts and industrial products, covering the full lifecycle of such an application: pre-application (providing support and guidance to applicants for completing the application dossier; the assessment step including the handling of an opposition phase if applicable, and the publication in a register; and the post registration phase, addressing modifications of the dossier if applicable; and liaising with an EU body (COM or AGENCY) for the EU level part of the registration procedure, or alternative options may be chosen[305].

Additional costs may occur for the COM/MS during the first 3 years from the moment of the entry into force in the form of time spent by staff on the following type of tasks:

- Liaising with the COM/MS on existing and potential files,
- Training staff on the new procedures,
- Building organisational knowledge and build consistent practices.
- Building methodologies, processes, and tools, including templates, etc.

[302] Source: DG AGRI, May 2021.
[303] Ibidem 4.
[304] See Study on geographical indications protection for non-agricultural products in the internal market, 2013, p. 31.
[305] See additional details in the introductory part of the Analysis section.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Costs for the PG: application fee at MS level if applicable**<br>**MS control fees if applicable** | MS application fee if applicable<br>MS control fees, if applicable. |
| **Costs for the PGs: application fees at EU level** | No application fee |
| **Costs (in FTEs) for the COM** | 20[306] |
| **Costs (in FTEs) for the AGENCY** | 0 |
| **Costs for the MS**[307] | Cost of the MS Scrutiny procedure |

8. Key advantages and main risks

| Stakeholder | Key advantage |
|---|---|
| **PGs** | Procedure to register craft and industrial GIs at EU level available |
| **MS** | Similar procedures to the agricultural GIs, advantage for the MS that have a designated public body to deal with all GIs (e.g. IP offices) |
| **EU/COM** | Opportunity to offer the EU internal market the possibility to benefit from GI protection for craft and industrial products at the EU level. |
| **Consumers** | Benefit from a quality and guarantee scheme for craft and industrial products |

[306] IT resources needed for customising the IT tool not included.
[307] See additional details in the Analysis Model section of this document.

| Stakeholder | Key risks |
|---|---|
| **PGs** | Risk of a lengthy and burdensome procedure for registering craft and industrial GIs |
| **MS** | Unclear communication channel leading to legal uncertainty |
| **EU/COM** | Capacity building associated cost implying public administrative burden.<br>Risk that the craft and industrial GI procedure does not consider the lessons learnt from the agricultural GI procedure.<br>Risk of lack of economies of scale and significant loss of opportunity to take advantage of available resources and synergies in the AGENCY. |
| **Consumers** | Risk of bearing the cost of an inefficient procedure |

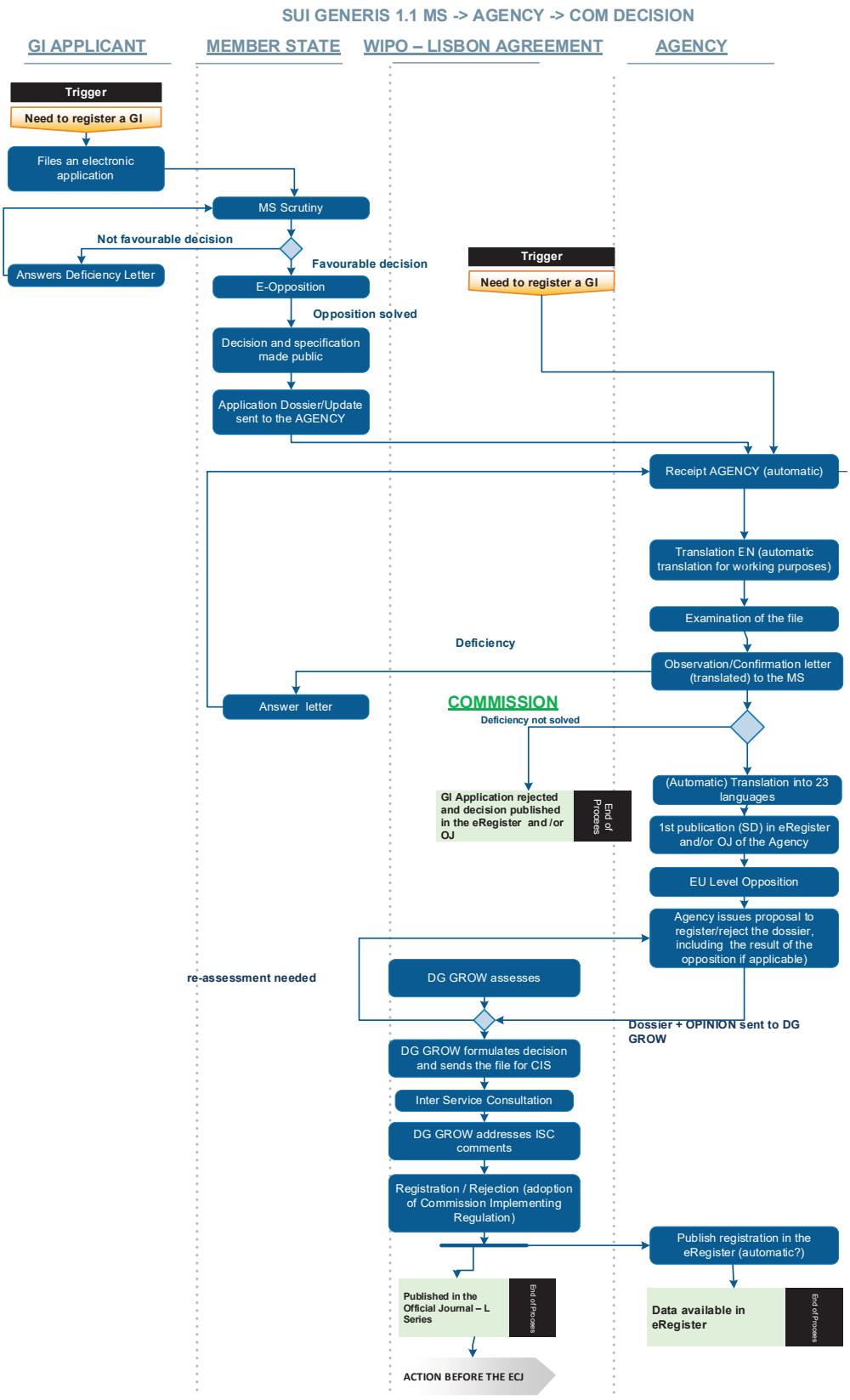
### *2. Option 1.1 [MS/EU] MS → AGENCY Opinion → COM Decision*

MS Level scrutiny; EU-level assessment and opposition with the AGENCY; COM's decision on registration;

Assumptions:

- AGENCY to develop and maintain the IT tools necessary for the reception of the applications, examination, and communication with MSs;
- For all proposed options where the AGENCY is participating to some extent in the GI registration process, (all options except Option 1.0 – no involvement of the AGENCY), a minimum period of 2 years is estimated to be required to implement the necessary IT infrastructure to support the assessment of GI application files.
- AGENCY to update IT tools for the management of eRegister[308].
- The flow is similar to Option 2.1 agricultural GI[309] and by and large will use the same values for the indicators used in the analysis. In particular, it is assumed that the file is duly processed by the AGENCY.
- Currently there are no dedicated teams/structures in DG GROW dedicated to GI registration related tasks, and such structure/team/network of available resources will have to be created in DG GROW to review the files from the AGENCY and to take decisions and create the legal instrument for the GI registration (e.g. implementing regulation as in the case of AGRI GI). Efforts are expressed in FTEs.
- A number of proposed improvement ideas described in the agricultural GI analysis[310] are assumed to be implemented/integrated already in the GI procedure for craft and industrial products.
- COM is the competent authority for the Lisbon agreement[311].

[308] Current GIview database to be customised for this purpose.
[309]Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[310] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[311] More details in the introductory part of the ANALYSIS section.

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1. Customer focused procedure

The following assumptions are considered for the below estimated values (Benchmark agricultural GI - Option 2.1 AGENCY Opinion – COM decision)[312]

- The AGENCY will handle applications dossiers directly with the MS and will prepare the file for the COM to take a decision.
- The IT tool will be ready to be used for craft and industrial GIs in less than 2 years from the date the legal instrument enters into force. This period is estimated by benchmarking against the average duration of similar projects/IT products at the AGENCY, provided the necessary budget and resources are available to be reserved at the moment when the project and the respective budgetary commitment are approved.
- There will be a complex system to be shared, coordinated, and synchronised between the COM and the AGENCY.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Modern, scalable, and customisable procedure** | 2/5 |
| **Level of the MS' satisfaction with the front and back office processes, including tools** | 70 % |
| **Level of satisfaction with the overall registration procedure** | 50 % |
| **Services characterised as 'customer-centric'** | 1/5 |

2. Accessible procedure

Assumptions:

- Information on files available to MS only in the back-office tool, the PGs are informed by the MS, the PGs do not have access to the information on their file in the back office tool.
- Several follow-ups, as needed.
- Guidelines with examples and templates would be made available.
- During the first 3 years there would not be a user-friendly application step. If a new tool is created, then probably it will be a minimum value product (MVP)
- A country representative would be appointed to liaise with the MS on the evolution of files.
- The MS would have access to the dossier status.

[312] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Availability of the procedure-related information using appropriate channels and formats** | 4/5 |
| **Comprehensibility of procedure-related information by a non-specialised public (derivative material)** | 2/5 |
| **Customised support available when filing the application** | 3/5 |
| **User-friendly and easy-to-use application filing step** | 2/5 |
| **Customised support available throughout the registration procedure** | 3/5 |
| **Perception of simplicity and ease of understanding and responding to the process and requirements** | 3/5 |
| **Procedures characterised as 'accessible'** | 3/5 |

3. Predictable GI registration procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Perception of the predictability/satisfaction with how long the procedure takes** | 1/5 |
| **Applicants are proactively informed on the status and the next steps to registration** | 1/5 |
| **Level of satisfaction with the predictability of the registration outcome** | 1/5 |

4. Quality of the application

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Formalities deficiency rate (completeness of the file)** | 5 % |
| **Link description deficiency rate** | 14 % |
| **Product description deficiency rate** | 7 % |

5. Output quality of the GI application assessment

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment** | 60 % |
| **Level of satisfaction with the consistency of the outcome of the GI application assessment** | 70 % |
| **Level of the PG/MS' satisfaction with the clarity of the observations on the application file sent to the MS** | 80 % |
| **Level of the PG/MS' satisfaction with the overall registration procedure** | 50 % |

6. Transparency for the PGs and MS, while the dossier is scrutinised at EU level

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of satisfaction with the information received on each dossier** | 80 % |
| **Level of satisfaction with the quality of the information on the latest changes to scrutiny practice** | 80 % |
| **Level of satisfaction with their involvement in the decision-making at EU level** | 75 % |

7. Efficient GI registration procedure

7.1 Timeliness of the procedure

Assumption: the expertise in handling GI applications is available to DG GROW[313].

[313] Ibidem 4.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions)** | 10 months |
| **Number of deficiency letters sent per file** | 3-4 on average |
| **Time taken to send the first letter of observations** | 2 months |
| **Time taken to register – all cases (EU level)** | Max 3 years |
| **Time taken to register – all cases (MS+EU level)** | Max 5 years |
| **Level of satisfaction with the duration of the registration procedure** | 50 % |

7.2 Cost of the procedure

The typical costs for the MS scrutiny step consists in the cost of the resources used for handling the applications for the GI registration for crafts and industrial products, covering the full lifecycle of such an application: pre-application (providing support and guidance to applicants for completing the application dossier; the assessment step including the handling of an opposition phase if applicable, and the publication in a register; and the post registration phase, addressing modifications of the dossier if applicable; and liaising with an EU body (COM or AGENCY) for the EU level part of the registration procedure, or alternative options may be chosen[314].

The costs for MS/COM during the first 3 years from the moment the GI legal instrument for crafts and industrial products enters into force:

Time spent by staff on tasks such as:

- Liaising with the COM/MS on existing and potential files,
- Training staff on the new procedures,
- Building organisational knowledge and build consistent practices,
- Building methodologies, processes, and tools, including templates, etc.

This option assumes that the AGENCY will be able to absorb the effort necessary to process the applications by using existing resources, in particular IT and Operations resources, with no impact on the COM's budget.

The COM's FTEs below are estimated on the basis that it is the AGENCY that prepares the dossiers up to the 'ready to take a decision' point. The 6 FTEs estimated below are broken down as follows:

- 2 FTEs are reserved for the oppositions.

[314] See additional details in the introductory part of the Analysis section.

- 2 FTEs are reserved for the interservice consultation and for moving the file through the COM's administrative procedure for publication.
- 2 FTEs max dedicated to reviewing the AGENCY's opinions, in particular for the recommended negative outcome of the assessment process. It is assumed that the number of applications recommended for rejection would be relatively low, considering the customer-oriented approach in the AGENCY, with the aim of helping applications reach a sufficient level of quality to meet the necessary registration requirements.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Costs for the PG: application fee at MS level if applicable**<br>**MS control fees if applicable** | No change |
| **Costs for the PGs: application fees at EU level** | No application fee |
| **Costs (in FTEs) for the COM** | 6 |
| **Costs (in FTEs) for the AGENCY** | 9 |
| **Costs for the MS**[315] | Cost for the MS Scrutiny procedure |

8. Key advantages and main risks

| Stakeholder | Key advantage |
|---|---|
| **PGs** | User-friendly and efficient procedure to register craft and industrial GIs at EU level available |
| **MS** | Accessible and transparent craft and industrial GI registration procedure, faster timeliness to assess the application files |
| **COM/AGENCY** | Opportunity to offer the EU internal market the possibility to benefit from GI protection for crafts and industrial products at the EU level.<br>Efficiency gains for the COM, economies of scale for the EU institutions, IPR system for the AGENCY. |
| **Consumers** | Benefit from a quality guarantee scheme for craft and industrial GI products |

[315] See additional details in the Analysis Model section of this document.

| Stakeholder | Key risks |
|---|---|
| **PGs** | Potential risk of confusion at PG and MS level over the division of responsibilities between the AGENCY and the COM.<br><br>Risk of lengthy procedure with two different EU bodies involved.<br><br>Risk of lack of legal certainty.<br><br>No appeal possible, only action before the Court. |
| **MS** | Potential risk of confusion at PG and MS level over the division of responsibilities between the AGENCY and the COM.<br><br>Risk of lengthy procedure with two different EU bodies involved.<br><br>Risk of lack of legal certainty.<br><br>No appeal possible, only action before the Court. |
| **EU/COM/AGENCY** | Risk of lack of legal certainty; the COM's decision has a dual nature (i.e. it pronounces itself on two matters at the same time – the recommendation of the AGENCY and the GI application itself).<br><br>Risks of reputational damage due to potential conflicts over the ownership of the decision/assuming the responsibility of the decision on a political level.<br><br>Risk of duplication of efforts between the AGENCY and the COM. |
| **Consumers** | Risk of bearing the cost of a burdensome registration procedure. |

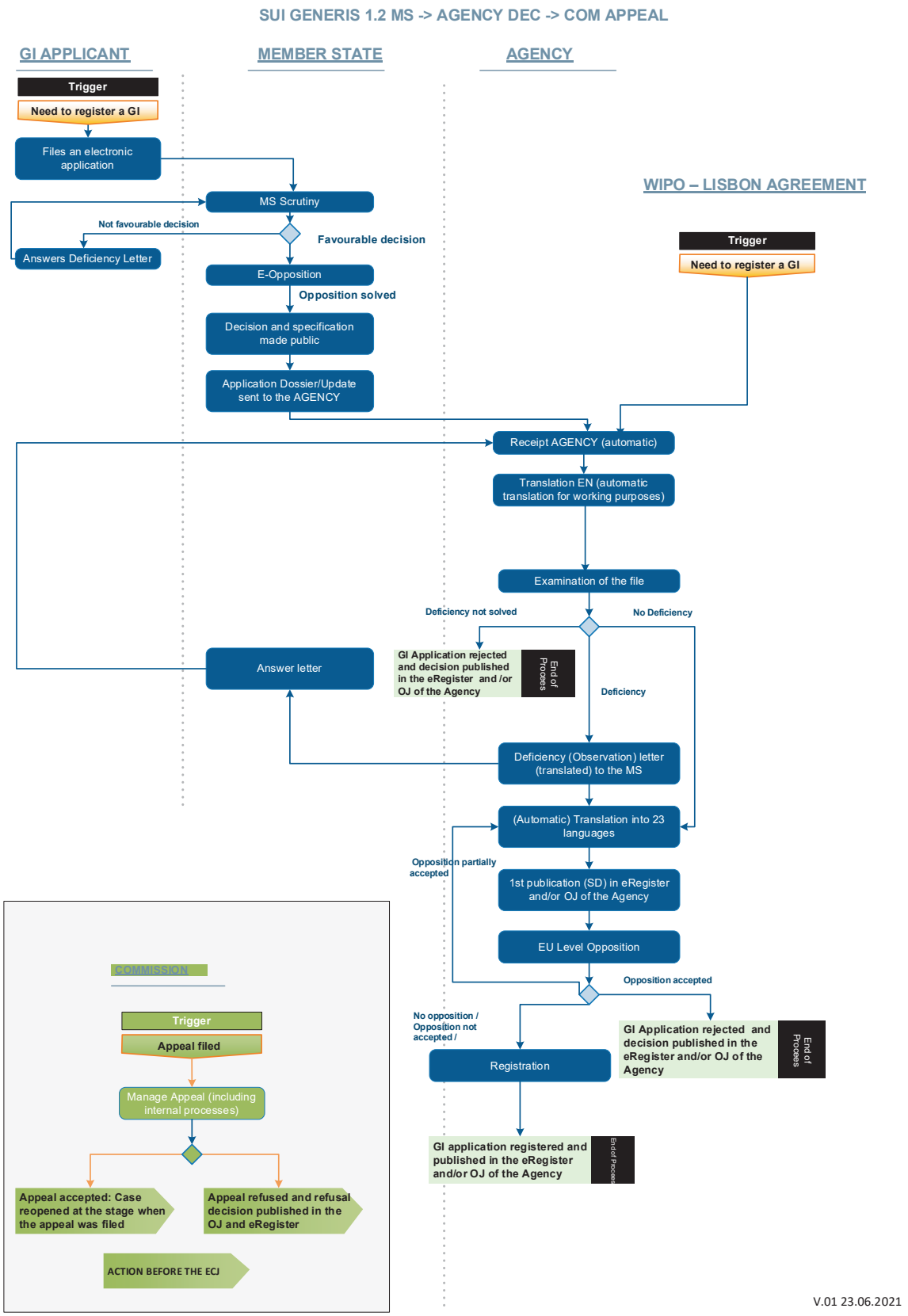
### 3. *Option 1.2 [MS/EU] MS → AGENCY Decision → COM appeal*

MS-Level scrutiny; EU-level assessment and decision by the AGENCY; appeal to the COM;

Assumptions (benchmark AGRI GRI Option 2.2 [MS/EU] MS -> AGENCY Decision -> COM appeal (access to DOCs))[316]:

- The AGENCY front and back office IT tools are used for the management of the craft and industrial GI file lifecycle (before, during and after registration).
- For all proposed options where the AGENCY is participating to some extent in the crafts and industrial GI registration process, (all options except Option 1.0 - no involvement of the AGENCY), a minimum period of 2 years is estimated to be required to implement the necessary IT infrastructure to support the assessment of crafts and industrial GI application files.
- The AGENCY assumes the role of competent authority for the Lisbon agreement[317].

[316] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[317] More details in the introductory part of the ANALYSIS section.

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1. Customer-focused procedure Benchmark AGRI GI (Option 2.2 MS -> AGENCY Decision -> COM appeal)

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Modern, scalable, and customisable procedure** | 5/5 |
| **Level of the PG/MS' satisfaction with the front and back office processes including tools** | 75 % |
| **Level of satisfaction with the overall registration procedure** | 90 % |
| **Services characterised as 'customer-centric'** | 3/5 |

2. Accessible procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Availability of the procedure related information using appropriate channels and formats** | 4/5 |
| **Comprehensibility of procedure related information by non-specialised public (derivative material)** | 4/5 |
| **Customised support available when filing the application** | 4/5 |
| **User-friendly and easy-to-use application filing step** | 5/5 |
| **Customised support available throughout the registration procedure** | 3/5 |
| **Perception of simplicity and ease of understanding and responding to the process and requirements** | 2/5 |
| **Procedures characterised as 'accessible'** | 3/5 |

3. Predictable GI registration procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Perception of the predictability/satisfaction with the duration of the procedure** | 4/5 |
| **Applicants are proactively informed on the status and the next steps to registration** | 4/5 |
| **Level of satisfaction with the predictability of the registration outcome** | 4/5 |

4. Quality of the application

The following indicators are proposed for analysing the quality of the applications:

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Formalities deficiency rate (completeness of the file)** | 5 % |
| **Link description deficiency rate** | 14 % |
| **Product description deficiency rate** | 7 % |

5. Output quality of the GI application assessment

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment** | 80 % |
| **Level of satisfaction with the consistency of the outcome of the GI application assessment** | 70 % |
| **Level of the PG/MS' satisfaction with the clarity of the observations on the application file sent to the MS** | 95 % |
| **Level of the PG/MS' satisfaction with the overall registration procedure** | 70 % |

6. Transparency for the MS and PGs, while the dossier is scrutinised at EU level

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of satisfaction with the information received on each dossier** | 95 % |
| **Level of satisfaction with the quality of the information on the latest changes to scrutiny practice** | 95 % |
| **Level of the satisfaction with their engagement in the decision-making at EU level** | 80 % |

7. Efficient GI registration procedure

7.1 Timeliness of the procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions)** | 6 months |
| **Number of deficiency letters sent per file** | Max 2 |
| **Time taken to send the first letter of observations** | 2 months |
| **Time taken to register – all cases (EU level)** | Average 2 years |
| **Time taken to register – all cases (MS+EU level)** | Average 3 years |
| **Level of satisfaction with the duration of the registration procedure** | 80 % |

7.2 Cost of the procedure

For options 1.2, 1.3, 1.4, 1.5, the AGENCY will be able to absorb the effort necessary to process the applications by using existing resources, in particular the IT and Operations budget, with no impact on the COM's budget. Given the intensive efforts in increasing the efficiency of the AGENCY's operations undertaken under the last two strategic plans, it is estimated that the AGENCY is able to absorb the craft and industrial GI necessary effort, regardless of the evolution of the TM/DS applications filed.

The typical costs for the MS scrutiny step consists in the cost of the resources used for handling the applications for the GI registration for crafts and industrial products, covering the full lifecycle of such an application: pre-application (providing support and guidance to applicants for completing the application dossier; the assessment step including the handling of an opposition phase if applicable, and the publication in a

register; and the post registration phase, addressing modifications of the dossier if applicable; and liaising with an EU body (COM or AGENCY) for the EU level part of the registration procedure, or alternative options may be chosen[318].

The costs for MS during the first 3 years from the moment of the entry into force of the GI legal instrument for crafts and industrial products, to include as well the:

- Time dedicated by staff to liaise with the AGENCY on existing and potential files,
- Time dedicated to train staff on the new procedures,
- Time dedicated by staff to build organisational knowledge and build consistent practices,
- Time dedicated by staff to build methodologies, processes, and tools, including templates, etc.

Two FTEs are estimated to be needed for the appeal procedure in the COM, assuming a very low appeal rate. The two FTEs are considered as available rather than used resources.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Costs for the PG: application fee at MS level if applicable**<br>**MS control fees if applicable** | No change |
| **Costs for the PGs: application fees at EU level** | No application fee |
| **Costs (in FTEs) for the COM** | 2 |
| **Costs (in FTEs) for the AGENCY** | 10 |
| **Costs for the MS[319]** | Cost of the MS Scrutiny procedure |

8. Key advantages and main risks

| Stakeholder | Key advantage |
|---|---|
| PGs | Modern procedure, integrated with other IPRs if applicable |
| MS | Harmonised procedures within the IPRs family |
| EU/COM/AGENCY | Moderate economies of scale for the EU bodies;<br>Integrated IPR system, except the appeal step; |

[318] See additional details in the introductory part of the Analysis section.
[319] See additional details in the Analysis Model section of this document.

| | |
|---|---|
| | Efficiency gains for the EU bodies overall if the AGENCY's experience in dealing with the WIPO files is reused by the AGENCY playing the role of competent authority for the Lisbon agreement;<br><br>Efficiency gains for the EU bodies overall if the international dossiers are not registered in the EU by means of Implementing Regulations, but by means of registration certificates issued by the AGENCY [320]. |
| Consumers | Benefit from a quality and guarantee scheme for crafts and industrial products. |

| Stakeholder | Key risk |
|---|---|
| PGs | Risk of confusion when choosing the applicable administrative procedure for appeals;<br><br>Risk of long delays until a political agreement is reached in case of appeals with no agreements;<br><br>Risk of having to deal with divergent practices between the examination body and the appeal body. |
| MS | Risk of long delays until a political agreement is reached in case of appeals with no agreements;<br><br>Risk of increased organisational costs given the need to invest in knowledge building and maintenance thereof regarding the examination and appeals practice of two organisations. |
| EU/COM/AGENCY | Risk of reputational damage in case the appeal outcomes are consistently changing the first instance decisions;<br><br>Risk of creating a costly procedure for EU bodies (COM and AGENCY) due to not re-using an existing AGENCY's appeal body and instead creating a new structure in COM/DG GROW to handle GI appeals;<br><br>Risk of decreased legal certainty for the PG groups and other IPR owners due to not re-using the consistency seeking mechanisms in place in the AGENCY's appeal body;<br><br>Risk of losing the opportunity to create an integrated IPR system joining and reusing efficient customer-driven procedures for several types of IP rights. |
| Consumers | Risk of confusion and being overwhelmed by the complexity of the issues. |

[320] More details in the introductory part of the ANALYSIS section.

### 4. *Option 1.3 [MS/EU] MS → MS → AGENCY Decision → Appeal body*

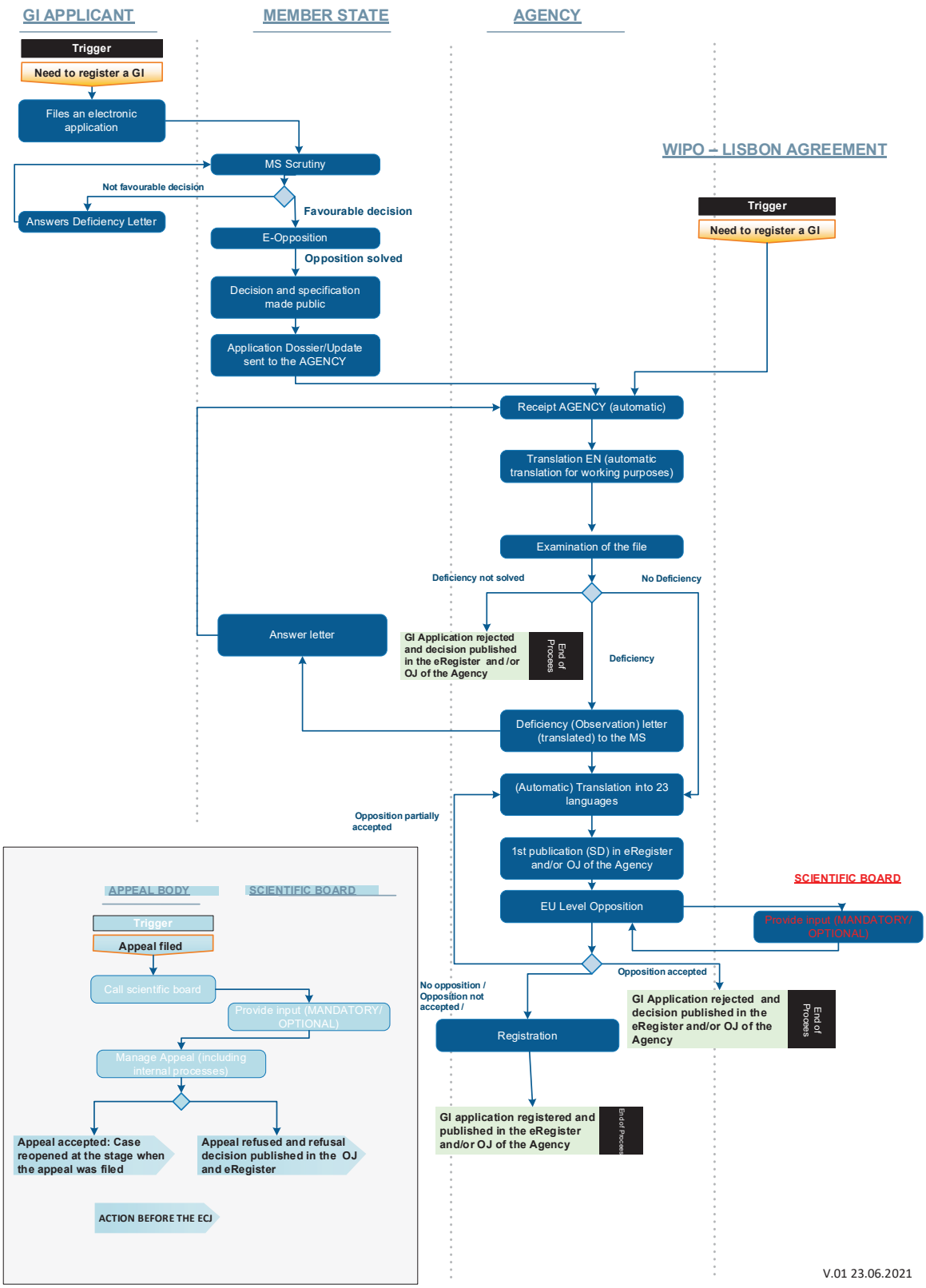
MS Level scrutiny; EU-level assessment and decision by the AGENCY; appeal to the appeal body of the AGENCY;

Assumptions (Benchmark AGRI GI (Option 1Option 1.1 [MS/EU - AGENCY only] MS -> AGENCY Decision -> Appeal body + Scientific Board)[321]

- For all proposed options where the AGENCY is participating to a different extent in the craft and industrial GI registration process, (all options except Option 1.0 - no involvement of the AGENCY), a minimum period of 2 years is estimated to be required to implement the necessary IT infrastructure to support the assessment of craft and industrial GIs application files.
- A scientific board is established and called upon request to provide the members of the appeal body or of the opposition team with a scientific opinion on cases where such scientific opinion is required for the objective and impartial assessment of the file.
- The AGENCY assumes the role of competent authority for the Lisbon agreement[322].

[321] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[322] More details in the introductory part of the ANALYSIS section.

## SUI GENERIS 1.3 [MS/EU - AGENCY ONLY] MS -> AGENCY DECISION -> APPEAL BODY + SCIENTIFIC BOARD

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1. Customer-focused procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Modern, scalable, and customisable procedure** | 5/5 |
| **Level of the PG/MS' satisfaction with the front and back office processes including tools** | 80 % |
| **Level of satisfaction with the overall registration procedure** | 90 % |
| **Services characterised as 'customer-centric'** | 4/5 |

2. Accessible procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Availability of the procedure-related information using appropriate channels and formats** | 5/5 |
| **Comprehensibility of procedure-related information by a non-specialised public (derivative material)** | 4/5 |
| **Customised support available when filing the application** | 4/5 |
| **User-friendly and easy-to-use application filing step** | 4/5 |
| **Customised support available throughout the registration procedure** | 5/5 |
| **Perception of simplicity and ease of understanding and responding to the process and requirements** | 3/5 |
| **Procedures characterised as 'accessible'** | 4/5 |

3. Predictable GI registration procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Perception of the predictability/satisfaction with the duration of the procedure** | 4/5 |
| **Applicants are proactively informed on the status and the next steps to registration** | 4/5 |
| **Level of satisfaction with the predictability of the registration outcome** | 4/5 |

4. Quality of the application

The following indicators are proposed for analysing the quality of the applications:

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Formalities deficiency rate (completeness of the file)** | 5 % |
| **Link description deficiency rate** | 14 % |
| **Product description deficiency rate** | 7 % |

5. Output quality of the GI application assessment

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment** | 80 % |
| **Level of satisfaction with the consistency of the outcome of the GI application assessment** | 95 % |
| **Level of the PG/MS' satisfaction with the clarity of the observations on the application file sent to the MS** | 95 % |
| **Level of the PG/MS' satisfaction with the overall registration procedure** | 90 % |

6. Transparency for the MS and PGs, while the dossier is scrutinised at EU level

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of satisfaction with the information received on each dossier** | 95 % |
| **Level of satisfaction with the quality of the information on the latest changes to scrutiny practice** | 95 % |
| **Level of the satisfaction with their engagement in the decision-making at EU level** | 95 % |

7. Efficient GI registration procedure

7.1 Timeliness of the procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions)** | 6 months |
| **Number of deficiency letters sent per file** | Max 2 |
| **Time taken to send the first letter of observations** | 2 months |
| **Time taken to register – all cases (EU level)** | Average 1.5 years |
| **Time taken to register – all cases (MS+EU level)** | Average 3 years |
| **Level of satisfaction with the duration of the registration procedure** | 80 % |

7.2 Cost of the procedure

For options 1.2, 1.3, 1.4, 1.5, the AGENCY will be able to absorb the effort necessary to process the applications, by using existing IT and operations resources and corresponding proportional overhead costs, with no impact on the COM's budget.

The dossiers are expected to be already assessed by the MS, and the AGENCY scrutinises[323] the dossiers similarly to the existing agricultural GI procedures[324].

[323] The scrutiny of a GI dossier refers to the assessment of an application file against the legal requirements for an application to be registered, including the exchange of letters with the MS/applicant for the remedy of any missing or insufficient elements.

Considering the current efficiency rate of the AGENCY in processing the TM applications[325] and the help provided to the COM in the assessment of the agricultural GI files, it is estimated that the AGENCY will be able to handle all expected incoming applications with 10 FTEs. Two FTEs are reserved for potential appeals.

The typical costs for the MS scrutiny step consists in the cost of the resources used for handling the applications for the GI registration for crafts and industrial products, covering the full lifecycle of such an application: pre-application (providing support and guidance to applicants for completing the application dossier; the assessment step including the handling of an opposition phase if applicable, and the publication in a register; and the post registration phase, addressing modifications of the dossier if applicable; and liaising with an EU body (COM or AGENCY) for the EU level part of the registration procedure, or alternative options may be chosen[326].

The costs for MS/COM, during the first 3 years from the moment of the entry into force of the GI legal instrument for crafts and industrial products, to include as well:

- Time dedicated by staff to liaise with the AGENCY on existing and potential files,
- Time dedicated by staff to acquire the new procedures,
- Time dedicated by staff to build organisational knowledge and build consistent practices,
- Time dedicated by staff to build methodologies, processes, and tools, including templates, etc.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Costs for the PG: application fee at MS level if applicable;**<br><br>**MS control fees if applicable.** | No change |

[324] Under the current SLA with the Commission/DG AGRI, the Agency already provides as a service to the Commission, the assessment of the agricultural GI files, which includes scrutiny of the files, drafting deficiency letters, re-examination, etc. The basis for the Administrative Agreement was the Memorandum of Understanding (MoU) – C(2009)2779 between DG GROW (acting for the Commission) and the EUIPO, signed in April 2019. It provides a framework for the conclusion of detailed working arrangements with individual Commission departments and specifically envisages in Section 7 to deepen practical cooperation between the EUIPO and DG AGRI.

[325] Study on control and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU, 2021, page 59.

[326] See additional details in the introductory part of the Analysis section.

| | |
|---|---|
| **Costs for the PGs: application fees at EU level** | No application fee |
| **Costs (in FTEs) for the COM** | 0 |
| **Costs (in FTEs) for the AGENCY** | 12 |
| **Costs for the MS**[327] | Cost of the MS Scrutiny procedure |

8. Key advantages and main risks

| Stakeholder | Key advantage |
|---|---|
| PGs | Modern procedure, integrated with other IPRs if applicable;<br><br>Legal certainty from a consistent and integrated IPR system covering the full IPR lifecycle (before, during and after registration);<br><br>Accessible IP system thanks to the consistent practice of an AGENCY and appeal body; |
| MS | Harmonised procedures within the IPRs family;<br><br>Less resources invested in understanding and keeping up to date with one set of practices of the AGENCY and its appeal body. |
| EU/AGENCY | Significant economies of scale by using available knowledgeable resources of the AGENCY's appeal body;<br><br>Efficiency gains for the EU bodies (COM and AGENCY) by using an AGENCY's appeal body rather than creating a new structure in COM/DG GROW to handle craft and industrial GI appeals;<br><br>Legal certainty for the PG groups and other IPR owners by re-using the consistency seeking mechanisms in place in the AGENCY's appeal body;<br><br>Integrated IPR system, by joining and reusing efficient customer driven procedures for several types of IP rights;<br><br>Efficiency gains for the EU bodies overall if the AGENCY's experience in dealing with the WIPO files is reused by EUIPO playing the role of competent authority for the Lisbon agreement; |
| Consumers | Benefit from a quality and guarantee scheme for crafts and industrial products. |

[327] See additional details in the Analysis Model section of this document.

| Stakeholder | Key risk |
|---|---|
| PGs | No significant risk has been identified for this stakeholder, relative to the other options included in this paper. |
| MS | No significant risk has been identified for this stakeholder, relative to the other options included in this paper. |
| EU/AGENCY | Risk of lack of expertise for the product sectors in the AGENCY. |
| Consumers | No significant risk has been identified for this stakeholder, relative to the other options included in this paper. |

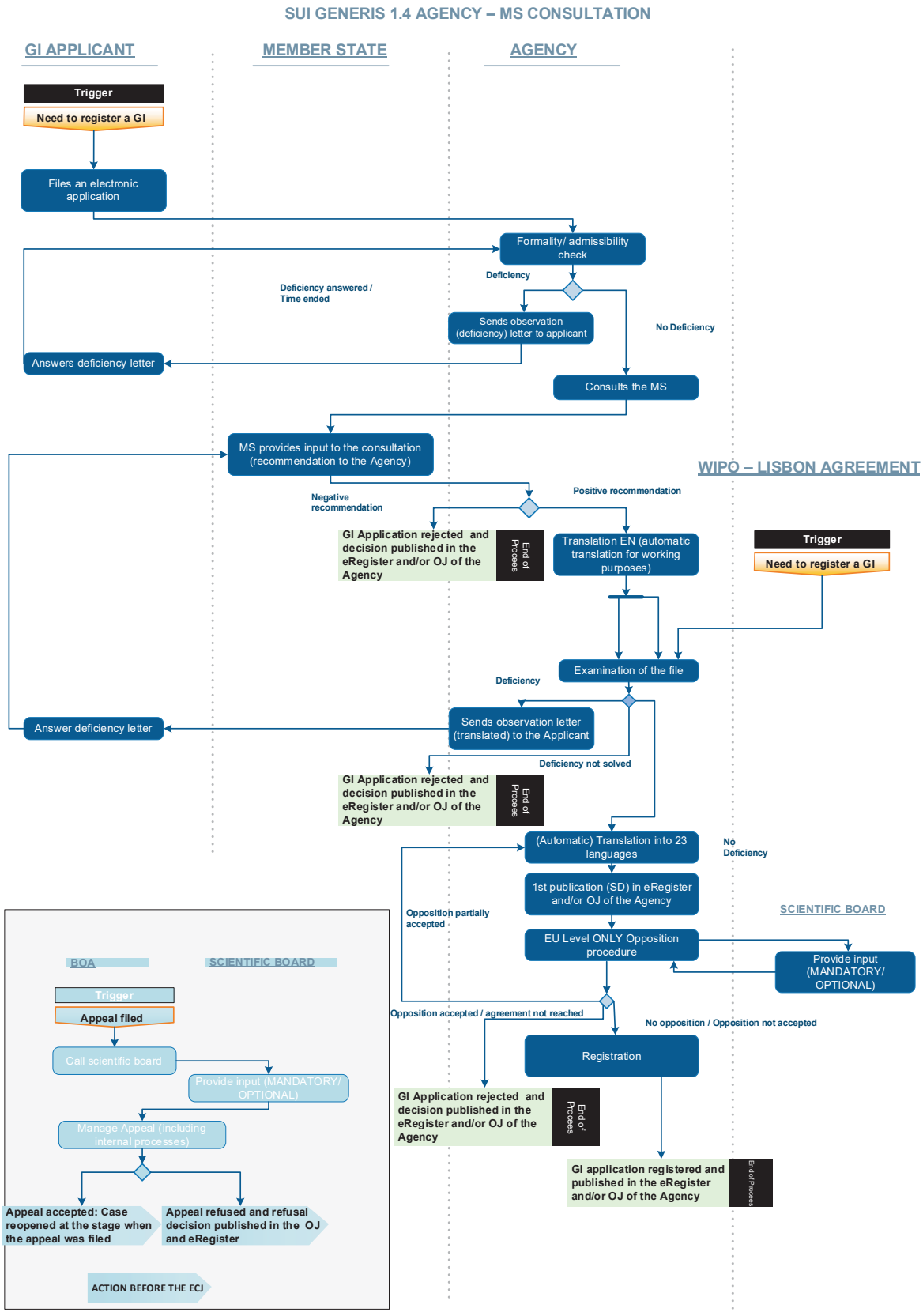
### *5. Option 1.4 [EU only – AGENCY only] AGENCY – MS Consultation*

No MS level, but MS consulted as part of the EU level registration procedure; AGENCY decision with input from the MS; appeal to the appeal body of the AGENCY;

Assuming that (Benchmark AGRI Option 1Option 1.2 [EU only - AGENCY only] AGENCY – MS Consultation)[328]

- For all proposed options where the AGENCY is participating to a different extent in the craft and industrial GI registration process, (all options except Option 1.0 – no involvement of the AGENCY), a minimum period of 2 years is estimated to be required to implement the necessary IT infrastructure to support the assessment of craft and industrial GIs application files.
- AGENCY assumes the role of competent authority for the Lisbon agreement[329].

[328] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[329] More details in the introductory part of the ANALYSIS section.



1. Customer-focused procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Modern, scalable, and customisable procedure** | 5/5 |
| **Level of the PG/MS' satisfaction with the front and back office processes including tools** | 75 % |
| **Level of satisfaction with the overall registration procedure** | 80 % |
| **Services characterised as 'customer-centric'** | 4/5 |

2. Accessible procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Availability of the procedure related information using appropriate channels and formats** | 3/5 |
| **Comprehensibility of procedure related information by non-specialised public (derivative material)** | 4/5 |
| **Customised support available when filing the application** | 3/5 |
| **User-friendly and easy-to-use application filing step** | 5/5 |
| **Customised support available throughout the registration procedure** | 5/5 |
| **Perception of simplicity and ease of understanding and responding to the process and requirements** | 5/5 |
| **Procedures characterised as 'accessible'** | 3/5 |

3. Predictable GI registration procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Perception of the predictability/satisfaction with the duration of the procedure** | 4/5 |
| **Applicants are proactively informed on the status and the next steps to registration** | 5/5 |
| **Level of satisfaction with the predictability of the registration outcome** | 4/5 |

4. Quality of the application

The following indicators are proposed for analysing the quality of the applications:

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Formalities deficiency rate (completeness of the file)** | 5 % |
| **Link description deficiency rate** | 14 % |
| **Product description deficiency rate** | 7 % |

5. Output quality of the GI application assessment

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment** | 80 % |
| **Level of satisfaction with the consistency of the outcome of the GI application assessment** | 95 % |
| **Level of the PGs' satisfaction with the clarity of the observations on the application file sent to the MS** | 95 % |
| **Level of the PG/MS' satisfaction with the overall registration procedure** | 85 % |

6. Transparency for the MS and PGs, while the dossier is scrutinised at EU level

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of satisfaction with the information received on each dossier** | 95 % |
| **Level of satisfaction with the quality of the information on the latest changes to scrutiny practice** | 95 % |
| **Level of the satisfaction with their engagement in the decision-making at EU level** | 95 % |

7. Efficient GI registration procedure

7.1 Timeliness of the procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions)** | 11 months |
| **Number of deficiency letters sent per file** | Max 2 |
| **Time taken to send the first letter of observations** | 2 months |
| **Time taken to register - all cases (EU level)** | 1.2 years average |
| **Time taken to register - all cases (MS+EU level)** | |
| **Level of the PGs satisfaction with the duration of the registration procedure** | 90 % |

7.2 Cost of the procedure

For options 1.2, 1.3, 1.4, 1.5, the AGENCY will be able to absorb the effort necessary to process the applications, in particular the IT and operations resources, with no impact on the COM's budget.

It is estimated that the overall costs for the MS consultation cost is expected to be lower than the costs of the MS when performing the MS scrutiny part of the EU level craft and industrial products GI registration procedure.

It is estimated that a significant amount of time will be invested by the MS in assessing the file and issuing a recommendation for the AGENCY on each craft and industrial GI file, however, this time is expected to be lower than the MS performing the full assessment of the dossiers. The difference between the two levels of assessment and the

implied responsibility on the completeness and correctness of dossiers is considered to be low.

In the case of this option, the applicant files the applications to the AGENCY first. Compared to option 1.3, an additional three FTEs are expected to be needed for the formality checks and for liaising with the producer groups until the moment the dossier is sufficiently complete and correct for a decision to be taken.

The 15 FTEs estimated for the AGENCY below, are broken down as follows:

- Three FTEs for the formalities assessment and ensuring the completeness of the dossiers for decision taking, including the consultation step with the MS.
- Ten FTEs for the full processing of the dossiers until the moment the dossiers are registered and visible on the register.
- Two FTEs reserved for potential appeals.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Costs for the PG: application fee at MS level if applicable**<br>**MS control fees if applicable** | Not applicable |
| **Costs for the PGs: application fees at EU level** | Application fee |
| **Costs (in FTEs) for the COM** | 0 |
| **Costs (in FTEs) for the AGENCY** | 15 |
| **Costs for the MS**[330] | Costs of MS Consultation procedure |

8. Key advantages and main risks

| Stakeholder | Key advantage |
|---|---|
| PGs | Modern procedure, integrated with other IPRs if applicable |
| MS | Harmonised procedures within the IPRs family |
| EU/AGENCY | Economies of scale<br>Integrated IPR system<br>Efficiency gains for the EU bodies overall if the AGENCY's experience in dealing with the WIPO files is reused by the AGENCY playing the role of competent authority for the Lisbon agreement; |

(330) See additional details in the Analysis Model section of this document.

| | |
|---|---|
| Consumers | Benefit from a quality and guarantee scheme for crafts and industrial products |

| Stakeholder | Key risk |
|---|---|
| PGs | Risk of perception of lack of nearness of the EU administration, including language availability. |
| MS | Risk of losing that special connection to the local producers, risk of lack of recognition of their work in the creation of registrable dossiers. |
| EU/AGENCY | Moderate likelihood that the MSs will oppose the EU-only level procedure, given their added value in relation to the PGs.<br>Risk of a decrease in the number of new applications due to a low reach in the potential number of interested PGs.<br>Risk of not having the needed expertise to assess the link with the area. |
| Consumers | N/A |

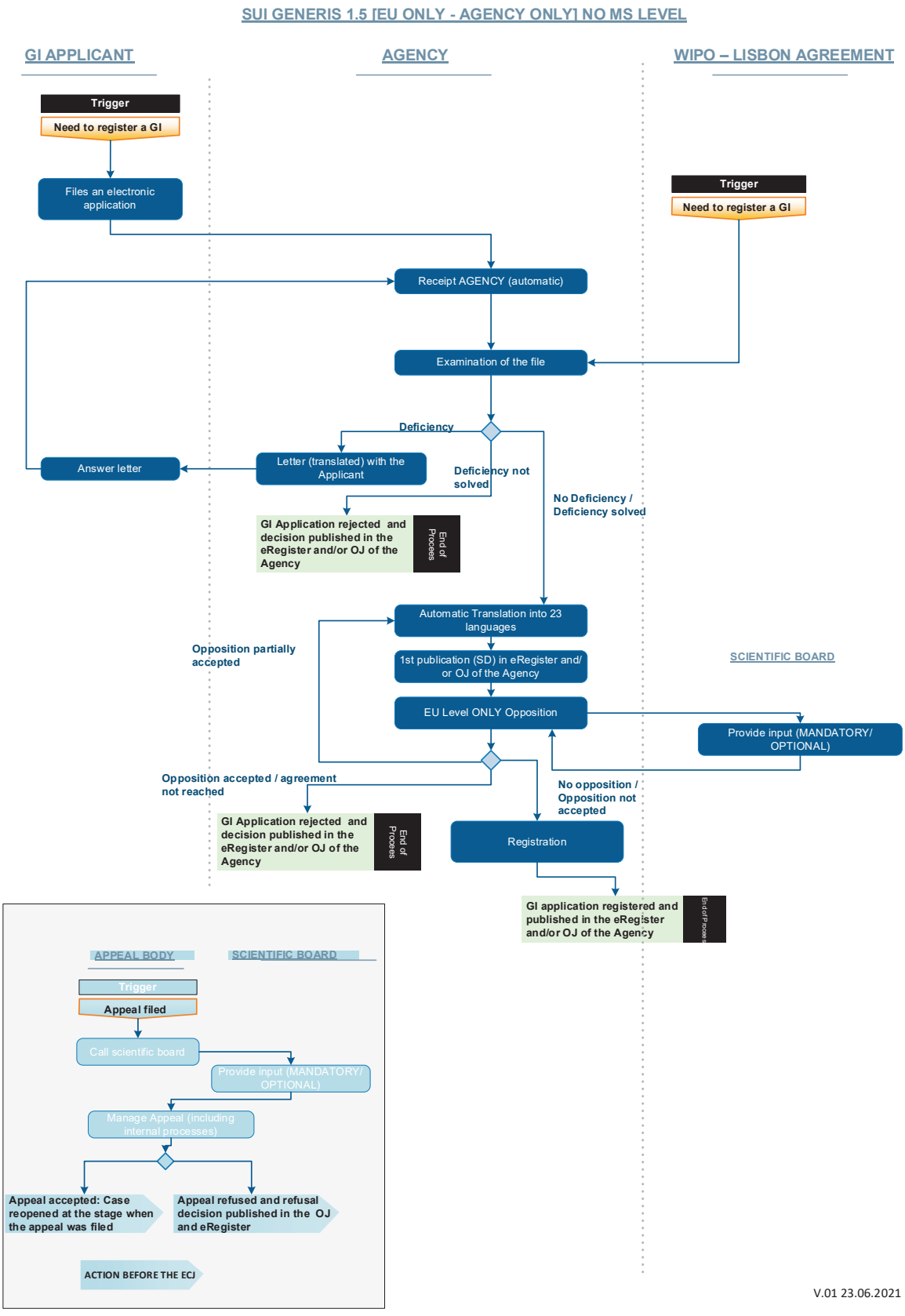
### *6. Option 1.5 [EU only – AGENCY only] No MS level*

No MS involvement; full procedure, including appeals at the EU level only;

Assuming that (benchmark Option 1Option 1.3 [EU only - AGENCY only] No MS level)[331]

- For all proposed options where the AGENCY is participating to different extents in the craft and industrial GI registration process, (all options except Option 1.0 – no involvement of the AGENCY), a minimum period of 2 years is estimated to be required to implement the necessary IT infrastructure to support the assessment of craft and industrial GIs application files.
- AGENCY assumes the role of competent authority for the Lisbon agreement[332].

[331] Annex 11: GI registration process options, Commission Staff Working Document, Impact Assessment Report accompanying the AGRI-GI regulation proposal.
[332] More details in the introductory part of the ANALYSIS section.



1. Customer-focused procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Modern, scalable, and customisable procedure** | 5/5 |
| **Level of the PG/MS' satisfaction with the front and back office processes including tools** | 75 % |
| **Level of satisfaction with the overall registration procedure** | 80 % |
| **Services characterised as 'customer-centric'** | 4/5 |

2. Accessible procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Availability of the procedure-related information using appropriate channels and formats** | 2/5 |
| **Comprehensibility of procedure-related information by a non-specialised public (derivative material)** | 4/5 |
| **Customised support available when filing the application** | 3/5 |
| **User-friendly and easy-to-use application filing step** | 5/5 |
| **Customised support available throughout the registration procedure** | 5/5 |
| **Perception of simplicity and ease of understanding and responding to the process and requirements** | 5/5 |
| **Procedures characterised as 'accessible'** | 2/5 |

3. Predictable GI registration procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Perception of the predictability/satisfaction with the duration of the procedure** | 5/5 |
| **Applicants are proactively informed on the status and the next steps to registration** | 5/5 |
| **Level of satisfaction with the predictability of the registration outcome** | 5/5 |

4. Quality of the application

The following indicators are proposed for analysing the quality of the applications:

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Formalities deficiency rate (completeness of the file)** | 5 % |
| **Link description deficiency rate** | 14 % |
| **Product description deficiency rate** | 7 % |

5. Output quality of the GI application assessment

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment** | 80 % |
| **Level of satisfaction with the consistency of the outcome of the GI application assessment** | 95 % |
| **Level of the PG/MS' satisfaction with the clarity of the observations on the application file sent to the MS** | 90 % |
| **Level of the PG/MS' satisfaction with the overall registration procedure** | 80 % |

6. Transparency for the MS and PGs, while the dossier is scrutinised at EU level

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Level of satisfaction with the information received on each dossier** | 95 % |
| **Level of satisfaction with the quality of the information on the latest changes to scrutiny practice** | 95 % |
| **Level of the satisfaction with their engagement in the decision-making at EU level** | 95 % |

7. Efficient GI registration procedure

7.1 Timeliness of the procedure

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions)** | 6 months |
| **Number of deficiency letters sent per file** | Max 2 |
| **Time taken to send the first letter of observations** | 2 months |
| **Time taken to register – all cases (EU level)** | 1-year average |
| **Time taken to register – all cases (MS+EU level)** | |
| **Level of the PG/MS satisfaction with the duration of the registration procedure** | 90 % |

7.2 Cost of the procedure

For options 1.2, 1.3, 1.4, 1.5, the AGENCY will be able to absorb the effort necessary to process the applications, with no impact on the COM's budget.

Assumptions:

- It is estimated that the overall costs for the MS is 0 since the MS is not involved in the registration process of the dossier[333].

[333] See additional details in the Analysis Model section of this document.

- The cost for the AGENCY increases, since additional resources (five FTEs) will have to be invested in ensuring the necessary technical and specialist expertise for taking a correct decision.

| Indicator | Craft and Industrial GI projected |
|---|---|
| **Costs for the PG: application fee at MS level if applicable**<br>**MS control fees if applicable** | Not applicable |
| **Costs for the PGs: application fees at EU level** | Application fee |
| **Costs (in FTEs) for the COM** | 0 |
| **Costs (in FTEs) for the AGENCY** | 20 |
| **Costs for the MS**[334] | 0 |

8. Key advantages and main risks

| Stakeholder | Key advantage |
|---|---|
| PGs | Modern procedure, integrated with other IPRs if applicable. |
| MS | Harmonised procedures within the IPRs family (within the AGENCY), considering that the internal procedures and guidelines are the same for all products, IPR applications. |
| EU/AGENCY | Economies of scale for the EU overall;<br>Integrated IPR system by applying consistent procedures for several types of IPRs;<br>Efficiency gains for the EU bodies overall if the AGENCY's experience in dealing with the WIPO files is reused by the EUIPO playing the role of competent authority for the Lisbon agreement. |
| Consumers | Benefit from a quality and guarantee scheme for crafts and industrial products. |

[334] See additional details in the Analysis Model section of this document.

| Stakeholder | Key risk |
|---|---|
| PGs | Risk of higher cost as communicating directly with an EU Level AGENCY. |
| MS | Risk of not having a say in protection of nationally rooted products. |
| EU/AGENCY | Risk of a substantial decrease in the effectiveness of the GI quality scheme due to the lack of direct MS involvement;<br><br>High likelihood that the MS will oppose the EU-only level procedure, given their added value in relation to the PGs;<br><br>Risk of lack of local expertise to assess the geographical link thus leading to a high cost in expert assistance;<br><br>Risk of a decrease in the number of new applications due to a low reach in the potential number of interested PGs. |
| Consumers | No significant risk identified. |

**MANAGEMENT OF THE GI eREGISTER [335]**

The GI eRegister is understood to play a significant role in achieving a positive impact on all aspects detailed in this analysis: a reduction in the length of the GI registration procedure and a reduction in the perceived burden. It is also particularly relevant to increasing the transparency of the GI registration procedure and to creating a shared IT user experience among EU producer groups.

The AGENCY would have certain advantages in managing the IT systems needed to support the smooth running of the GI registration process. Therefore, the options explored in the previous section look at the involvement of the AGENCY in the management of the eRegister, with a view to taking advantage of the AGENCY's experience, flexibility, agility and the availability of resources and knowledge, as well as synergies with other IPRs, if handled by the EUIPO as the IP AGENCY of the EU.

As a first step, the AGENCY currently managing the GIview database, which is the most complete database of registered agricultural GIs globally (EU and non-EU alike) could be explored into becoming the new eRegister for craft and industrial GIs, liaising with the back office tools. The estimated time to set up the eRegister would be a minimum of 12 months. The AGENCY would further develop and manage a front/back office for the purpose of craft and industrial GI applications which would:

- allow users to track changes in their craft and industrial GI files;
- have a new modern user interface with extended search capabilities;
- display craft and industrial GIs that have protection in the EU by means of international agreements;
- integrate with existing IP enforcement tools;
- provide search services to third party tools.

The management of an eRegister management with the AGENCY is considered to have a positive impact on each of the benefits considered in this analysis.

[335] Additionally, see Study on geographical indications protection for non-agricultural products in the internal market, 2013, p 318-319. To be noted that the disadvantages mentioned in the Study have already been rectified due to the capacity building pilot project in assessment of agricultural GIs on the side of the EUIPO.

## PART C: Comparison of *sui generis* GI EU level procedure options

*Comparison summary*

The table below reviews the ranking of options according to the overall scores received. The figures are not used in terms of absolute values. They are relevant only as comparative values: a higher score implies a better score.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + APPEAL body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| Customer focused | 0 | 1 | 6 | 8 | 6 | 6 |
| Accessible | 1 | 5 | 8 | 11 | 10 | 8 |
| Predictable | 0 | 0 | 3 | 3 | 4 | 6 |
| Quality of the application | 0 | 6 | 6 | 6 | 6 | 6 |
| Quality of the assessment | 2 | 3 | 5 | 7 | 7 | 6 |
| Transparent | 0 | 3 | 5 | 6 | 6 | 6 |
| Efficient: timeliness | 1 | 4 | 9 | 9 | 11 | 12 |
| Efficient: Costs | 5 | 5 | 5 | 6 | 5 | 4 |
| Risks | 1 | 4 | 6 | 16 | 13 | 7 |
| eRegister | 0 | 2 | 2 | 2 | 2 | 2 |
| Total | 10 | 33 | 55 | 74 | 70 | 63 |

The following sections summarise the indicators' behaviours and the underlying assumptions for each of the improvement vectors identified.

### 1. *Customer-focused procedure*

Main assumption used for the below scores is that customers prefer: receiving local support, maybe even face-to-face discussions, direct help and even co-creation of the necessary documentation to ensure that it meets the legal requirements. Therefore, the presence of the MS scrutiny step in *the sui generis* procedure essentially influenced the scores awarded.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 0 | 1 | 6 | 8 | 6 | 6 |
| Modern, scalable, and customisable procedure | 1/5 | 2/5 | 5/5 | 5/5 | 5/5 | 5/5 |
| Level of the PG/MS' satisfaction with the front and back office processes including tools | 40 % | 70 % | 75 % | 80 % | 75 % | 75 % |
| Level of satisfaction with the overall registration procedure | 50 % | 50 % | 90 % | 90 % | 80 % | 80 % |
| Services characterised as 'customer-centric' | 1/5 | 1/5 | 3/5 | 4/5 | 4/5 | 4/5 |

*2. Accessible procedure*

Summary of the main criteria used to compare the options on the perception of the burden of the GI registration procedures (including amendments).

- Accessibility of the process is an essential characteristic of any IP system.
- Ensuring 100 % accessibility of the system (tools, knowledge, support) is considered cost intensive if processes and practices need to be created anew. The AGENCY could extend its existing successful practices to cover the handling of craft and industrial GIs as well, hence the higher scores awarded for the options where the AGENCY plays a more substantive role.
- Options 1.4 and 1.5 received a lower score on the availability of customised support, assuming that customers prefer to receive support from someone who knows their area of business, from the same country and in their language, hence, dealing directly with the AGENCY, without the MS step could be considered a hindering factor.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 1 | 5 | 8 | 11 | 10 | 8 |
| Availability of the procedure related information using appropriate channels and formats | 1/5 | 4/5 | 4/5 | 5/5 | 3/5 | 2/5 |
| Comprehensibility of procedure related information by non-specialised public (derivative material) | 1/5 | 2/5 | 4/5 | 4/5 | 4/5 | 4/5 |
| Customised support available when filing the application | 1/5 | 3/5 | 4/5 | 4/5 | 3/5 | 3/5 |
| User-friendly and easy-to-use application filing step | 1/5 | 2/5 | 5/5 | 4/5 | 5/5 | 5/5 |

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 1 | 5 | 8 | 11 | 10 | 8 |
| Customised support available throughout the registration procedure | 3/5 | 3/5 | 3/5 | 5/5 | 5/5 | 5/5 |
| Perception of simplicity and ease of understanding and responding to the process and requirements | 2/5 | 3/5 | 2/5 | 3/5 | 5/5 | 5/5 |
| Procedures characterised as 'accessible' | 1/5 | 3/5 | 3/5 | 4/5 | 3/5 | 2/5 |

### *3. Predictable procedure*

Main assumptions:

- Predictability of the process and of the outcome is an aspect intensively requested by the AGENCY's users and also mentioned by the MS for the agricultural GIs, hence its inclusion in the list of desired attributes of the GI procedures for crafts and industrial products.
- Achieving predictable process and outcome is considered cost intensive if processes and practices need to be created anew. The AGENCY already reached a high maturity in this area, and could extend its existing successful practices, reuse existing methodologies and structures to cover the handling of craft and industrial GIs as well. Therefore, higher scores were awarded for the options where the AGENCY plays a more substantive role.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 0 | 0 | 3 | 3 | 4 | 6 |
| Perception of the predictability/Satisfaction with the predictability of the delay of the procedure | 1/5 | 1/5 | 4/5 | 4/5 | 4/5 | 5/5 |
| Applicants are proactively informed on the status and the next steps to registration | 1/5 | 1/5 | 4/5 | 4/5 | 5/5 | 5/5 |
| Level of satisfaction with the predictability of the registration outcome | 1/5 | 1/5 | 4/5 | 4/5 | 4/5 | 5/5 |

*4. Quality of the application*

Summary of the main criteria used to compare the options on the quality of the application for the GI registration procedures (including amendments).

- The quality of the application is an essential aspect of the efficiency in dealing with IPR applications. The AGENCY has developed mechanisms for speedier treatment of perfect applications ('straight-through' applications), which could be put to good use for the GI process for crafts and industrial products.
- The quality of the applications depends heavily on the applicant, either the MS, or the PG, and therefore additional effort needs to be invested in the 'before filing' part of the process, to ensure that the applicant has the appropriate level of knowledge and understanding of the process, and that additional (automatic) checks are implemented in the forms and tools used when effectively filing the application. Again, these are cost and time intensive measures, and it is assumed that during the first 3 years, they will not be fully operational, hence the lower scores awarded for option 1.0.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 0 | 6 | 6 | 6 | 6 | 6 |
| Formalities deficiency rate (completeness of the file) | 10 % | 5 % | 5 % | 5 % | 5 % | 5 % |
| Link description deficiency rate | 50 % | 14 % | 14 % | 14 % | 14 % | 14 % |
| Product description deficiency rate | 20 % | 7 % | 7 % | 7 % | 7 % | 7 % |

*5. Quality of the output*

Summary of the main criteria used to compare the options on the transparency of the GI registration scrutiny procedures (including amendments).

Main assumptions:

- The AGENCY has invested heavily in the last 10+ years in creating and perfecting its mechanisms to ensure that the output of the examination processes (decisions and registrations publications) are consistent, meaning that similar cases are treated the same way, thus resulting in a similar outcome and ensuring that the reasoning/argumentation of the decision/observations is drafted using plain words, in easy-to-understand language for the benefit of both specialised and non-specialised customers. These mechanisms could be extended to the craft and industrial GI files at very little marginal cost to the AGENCY, and no impact at all on the COM's budget.
- The creation of said quality assurance and control mechanisms is costly, even with customised consultancy and advisory services, hence why the scores for option 1.0 and 1.1 are lower for the first 3 years.

| Benefit indicator | [MS/EU] COM only<br>1.0 MS + COM | [MS/EU] AGENCY + COM<br>1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM<br>1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only<br>1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only<br>1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only<br>1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 2 | 3 | 5 | 7 | 7 | 6 |
| Level of the PG/MS' satisfaction with the consistency of the preliminary results of the assessment | 60 % | 60 % | 80 % | 80 % | 80 % | 80 % |
| Level of satisfaction with the consistency of the outcome of the GI application assessment | 50 % | 70 % | 70 % | 95 % | 95 % | 95 % |
| Level of the PG/MS' satisfaction with the clarity of the observations on the application file sent to the MS | 80 % | 80 % | 95 % | 95 % | 95 % | 90 % |

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 2 | 3 | 5 | 7 | 7 | 6 |
| Level of the PG/MS' satisfaction with the overall registration procedure | 70 % | 50 % | 70 % | 90 % | 85 % | 80 % |

*6. Transparency*

Summary of the main criteria used to compare the options and of the main assumptions:

The craft and industrial GI applications will receive a significant amount of attention and will be advertised both at the EU and at the MS level. Hence the pressure on keeping all affected stakeholders informed on the progress of the file through the registration journey is essential, and that requires additional effort if the process needs to be separately created. The AGENCY already has a number of relevant customer engagement strategies and processes implemented, hence the higher scores awarded for the options where the AGENCY is assuming a more substantive role in the overall scenario (options 1.2 to option 1.5).

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | 0 | 3 | 5 | 6 | 6 | 6 |
| Level of satisfaction with the information received on each dossier | 50 % | 80 % | 95 % | 95 % | 95 % | 95 % |
| Level of satisfaction with the quality of the information on the latest changes to scrutiny practice | 50 % | 80 % | 95 % | 95 % | 95 % | 95 % |
| Level of satisfaction with their engagement in the decision-making at EU level | 60 % | 75 % | 80 % | 95 % | 95 % | 95 % |

## *7. Efficient procedure*

### *7.1 Length (timeliness of the procedure)*

Summary of the main criteria used to compare the options on the length of the GI registration procedures (including amendments).

1. 6 months are envisaged for the registration of a GI in the event of 'perfect applications' – where no interaction with the MS/PG is needed – split as follows: 2 months for examination/scrutiny, 3 months for the opposition period, 1 month for the preparation of the registration documentation[336].
2. In addition, 2 months are allowed for clearing any product description or link description issues for 95 % of the dossiers (i.e. excluding those cases where long waiting times are needed, until specific geographical aspects can be measured).
3. For Option 1.1, 4 months are allowed for the COM's consultation and decision procedures.
4. For Option 1.4, 5 months are allowed for the MS consultation step.
5. The benchmark used for the 2-month period used until the first action is issued (i.e. examination completed, and observation letter sent out) is other IPR service standards.
6. The benefits realisation time is estimated at minimum 3 years, allowing for a transition period.
7. Target time is understood as an internal organisational objective, while the average time / performance time can be calculated based on previous year(s), assuming that sufficient cases are handled for the data to become relevant.
8. See all the assumptions made in the detailed analysis of each option.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| Totals | 1 | 4 | 9 | 9 | 11 | 12 |
| Duration of registration procedure for applications with no link or product description issues (EU level, no oppositions) | 10 months | 10 months | 6 months | 6 months | 11 months | 6 months |
| Number of deficiency letters sent | 4 on | 3-4 on | Max 2 | Max 2 | Max 2 | Max 2 |

[336] See https://euipo.europa.eu/ohimportal/en/euipo-service-charter

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| per file | average | average | | | | |
| Time taken to send the first letter of observations | 4 months | 2 months | 2 months | 2 months | 2 months | 2 months |
| Time taken to register - all cases (EU level) | 3 years on average | Max 3 years | Average 2 years | Average 1.5 years | 1.2 year average | 1 year average |
| Time taken to register - all cases (MS+EU level) | 5 years on average | Max 5 years | Average 3 years | Average 3 years | 1.2 year average | 1 year average |
| Level of the PGs satisfaction with the duration of the registration procedure | 50 % | 50 % | 80 % | 80 % | 90 % | 90 % |

7.2 *Costs*

Summary of the main criteria used to compare the options on the costs of the GI registration procedures for crafts and industrial products (including amendments).

- For options 1.2, 1.3, 1.4, 1.5, the AGENCY will be able to absorb the effort necessary to process the applications, with no impact on the COM's budget.
- The costs of the AGENCY are assumed to increase proportionally with the level of the AGENCY's responsibility and autonomy in managing GI files.
- The MS' costs consider potential effort (time dedicated) to accompanying the applicant throughout the full life cycle of the GI IPR, assessing the application dossier and moving it through the registration journey, liaising with the EU (COM or AGENCY), preparing informative material and communication campaigns for the potential customers, etc.
- The costs, or changes in costs, presented in the table below are estimated for the first 3 years from the date of entry into force and they refer to the availability, rather than time effectively spent (e.g. there are 2 FTEs reserved for handling appeals, however, it is highly unlikely that that amount of time will be effectively

spent on handling appeals during the first 3 years, given that the appeal rate is expected to be low).[337]

- See all the assumptions made in the detailed analysis of each option.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only |
|---|---|---|---|---|---|---|
| Totals | 5 | 5 | 5 | 6 | 5 | 4 |
| Costs for the PG: application fee at MS level if applicable<br>MS control fees if applicable | No change | No change | No change | No change | N/A | N/A |
| Costs for the PGs: application fees at EU level | No fee | No fee | No fee | No fee | Application fee | Application fee |
| Costs (in FTEs) for the COM | 20 | 6 | 2 | 0 | 0 | 0 |
| Costs (in FTEs) for the AGENCY | 0 | 9 | 10 | 12 | 15 | 20 |
| Costs for the MS | MS scrutiny | MS scrutiny | MS scrutiny | MS scrutiny | MS consultation | 0 |

[337] Source: MS questionnaire 2021, estimated appeal rate (the highest possible appeal rate scenario): max 2%, reference EUTM appeal rate approx. 10% at a volume of rounded 150k TM applications per year. Optimistic scenario: 800 non AGRI GI over 3 years, 2% appeals=16 appeals. EUIPO estimated 2020 360FTEs / 2500 appeals filed = 0.14 FTEs/appeal dossier.

### 8. *Advantages and Risks*

The scoring for the risks included in the table below is built in such a way that the principle higher score implies a better option is maintained, as follows: low impact-low probability risks are marked in green and awarded 2 points, medium impact and probability risks are marked in yellow and given 1 point, and finally, high impact and high probability risks are marked in red and given 0 points. Where no significant risks have been identified, the respective option is marked N/A in green and given 2 points, thus giving a higher score for the options with less impact risks.

The summary of the main criteria used to compare the options on the risks identified for the craft and industrial GI registration procedures (including amendments) are presented below.

- It is assumed that the MS are in favour of maintaining/creating a MS-level procedure.
- It is assumed that the greater the number of stakeholders involved, the greater the probability of complexity, and therefore the greater the probability of confusion, diffusion of responsibility and potential confusion of the PGs.
- See all the assumptions made in the detailed analysis of each option.

| Benefit indicator | [MS/EU]<br>COM only<br>1.0 MS + COM | [MS/EU]<br>AGENCY + COM<br>1.1 MS+ AGENCY opinion + COM decision | [MS/EU]<br>AGENCY + COM<br>1.2 MS + AGENCY decision + COM appeal | [MS/EU]<br>AGENCY only<br>1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.5 AGENCY only |
|---|---|---|---|---|---|---|
| Totals | 1 | 4 | 6 | 16 | 13 | 7 |
| PGs | Risk of a lengthy and burdensome procedure for registering craft and industrial GIs | Risk of lack of legal certainty; the COM decision has a dual nature (i.e. it pronounces itself on two matters at the same time – the recommendation of the AGENCY and the GI application itself) | Risk of confusion over choosing the applicable administrative procedure for the appeals | No equivalent risk detected | Risk of the perception that the EU administration is too geographically far or that there will be linguistic barriers or no availability of speakers of a given language | Risk of higher cost as communicating directly with an EU Level AGENCY |

| Benefit indicator | [MS/EU]<br>COM only<br>1.0 MS + COM | [MS/EU]<br>AGENCY + COM<br>1.1 MS+ AGENCY opinion + COM decision | [MS/EU]<br>AGENCY + COM<br>1.2 MS + AGENCY decision + COM appeal | [MS/EU]<br>AGENCY only<br>1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | | No appeal possible, only action before the Court | Risk of having to deal with divergent practices between the examination body and the appeal body | | | |
| MS | Risk of unclear communication channel leading to legal uncertainty | Risk of confusion at MS and PG level over the division of responsibilities between the AGENCY and the COM | Risk of long delays until a political agreement is reached in case of appeals with no agreements | No equivalent risk detected | Risk of losing that special connection to the local producers, risk of lack of recognition of their work in the creation of registrable dossiers | Risk of not having a say in the protection of nationally rooted products |
| | | No appeal possible, only action before the Court. | | | | |
| EU/COM/ AGENCY | Risk of lack of economies of scale and significant loss of opportunity to take advantage of available resources and synergies in an IP AGENCY | Risk of duplication of efforts between the AGENCY and the COM | Risk of reputational damage in case the appeals' outcomes are consistently changing the first instance's decisions | Risk of lack of expertise in product sectors in the AGENCY | Risk of lack of expertise in product sectors in the AGENCY | Risk of a substantial decrease in the effectiveness of the GI quality scheme due to the lack of direct MS involvement |
| | | Risks of reputational damage due to potential conflicts over the ownership of the decision / assuming the responsibility of the decision on a political level | | No equivalent risk detected | Moderate likelihood that the MS will oppose the EU-only level procedure, given their added value in relation to the PGs | High likelihood that the MS will oppose the EU-only level procedure, given their added value in relation to the PGs |
| | | | | No equivalent | Risk of lack of | Risk of lack of local |

| Benefit indicator | [MS/EU]<br>COM only<br>1.0 MS + COM | [MS/EU]<br>AGENCY + COM<br>1.1 MS+ AGENCY opinion + COM decision | [MS/EU]<br>AGENCY + COM<br>1.2 MS + AGENCY decision + COM appeal | [MS/EU]<br>AGENCY only<br>1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | | | Risk of creating a costly procedure for EU bodies (COM and AGENCY) due to not re-using an existing AGENCY's appeal body rather than creating a new structure in DG GROW to handle GI appeals; | risk detected | local expertise to assess the geographical link leading to high cost in expert assistance | expertise to assess the geographical link leading to high cost in expert assistance |
| | | | Risk of decreased legal certainty for the PG groups and other IPR owners for not re-using the consistency seeking mechanisms already in place in the AGENCY's appeal body; | No equivalent risk detected | No equivalent risk detected | No equivalent risk detected |

| Benefit indicator | [MS/EU]<br>COM only<br>1.0 MS + COM | [MS/EU]<br>AGENCY + COM<br>1.1 MS+ AGENCY opinion + COM decision | [MS/EU]<br>AGENCY + COM<br>1.2 MS + AGENCY decision + COM appeal | [MS/EU]<br>AGENCY only<br>1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only]<br>AGENCY only<br>1.5 AGENCY only |
|---|---|---|---|---|---|---|
| | | | Risk of losing the opportunity to create an integrated IPR system joining and reusing efficient customer driven procedures for several types of IP rights; | No equivalent risk detected | Risk of a decrease in the number of new applications due to a low reach in the potential number of interested PGs | Risk of a decrease in the number of new applications due to a low reach in the potential number of interested PGs |
| Consumers | Risk of bearing the cost of a burdensome registration procedure | Risk of bearing the cost of a burdensome registration procedure | Risk of confusion and feeling overwhelmed by the complexity of the issues | No equivalent risk detected | No equivalent risk detected | No equivalent risk detected |

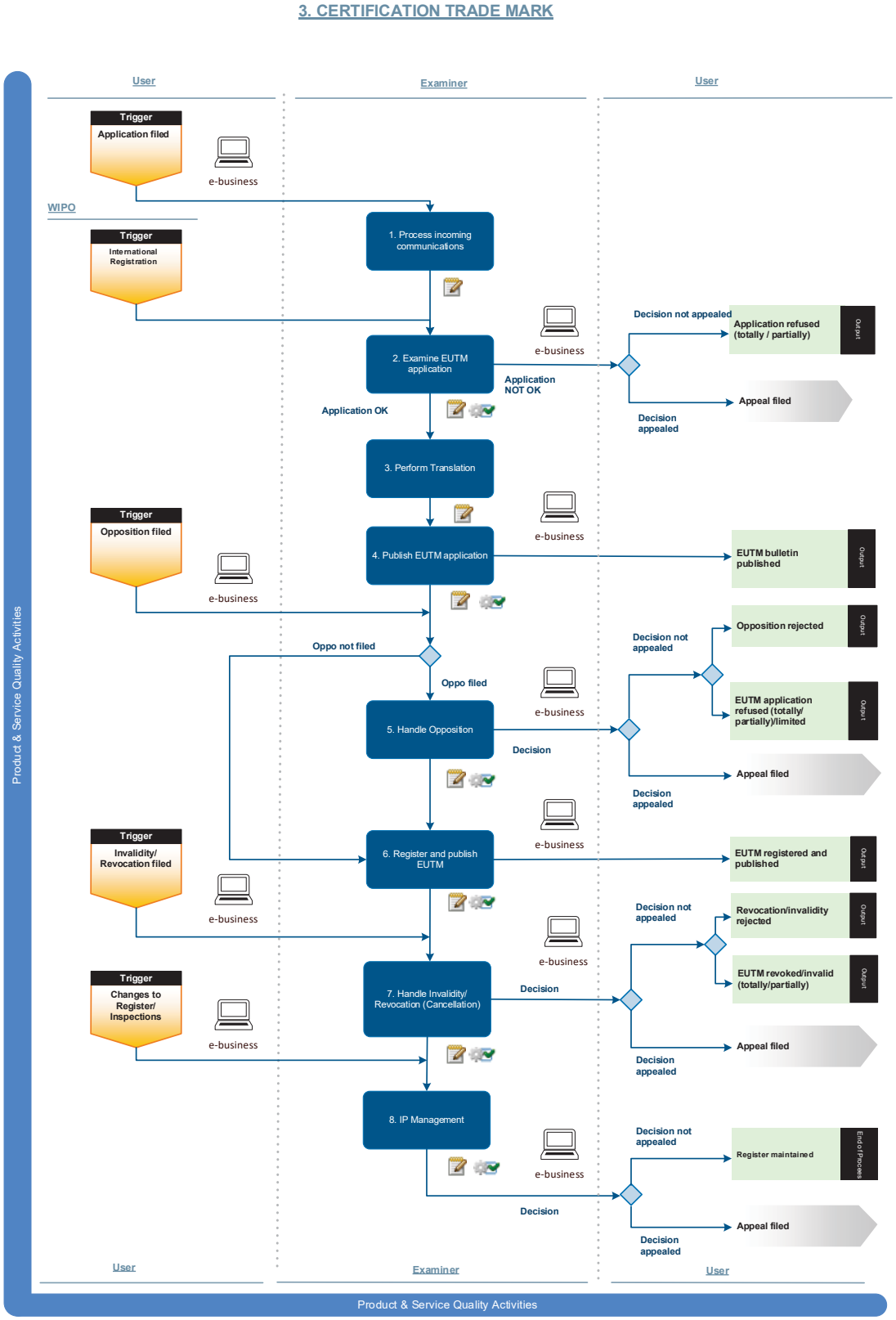
*9. eRegister*

Summary of the main criteria used to compare the options on the eRegister with the AGENCY:

- It is assumed that a positive impact will be achieved if the eRegister is managed by the AGENCY, by taking advantage of the resources available and the readiness of the AGENCY to invest resources in adding value to the GI quality scheme.
- See all the assumptions made in the detailed analysis in the previous section of this document.

| Benefit indicator | [MS/EU] COM only 1.0 MS + COM | [MS/EU] AGENCY + COM 1.1 MS+ AGENCY opinion + COM decision | [MS/EU] AGENCY + COM 1.2 MS + AGENCY decision + COM appeal | [MS/EU] AGENCY only 1.3 MS + AGENCY + Appeal body/Scientific Board | [EU only] AGENCY only 1.4 AGENCY + Consult MS + Appeal body/Scientific Board | [EU only] AGENCY only 1.5 AGENCY only + Appeal body |
|---|---|---|---|---|---|---|
| Totals | 0 | 2 | 2 | 2 | 2 | 2 |
| eRegister with the AGENCY | NO | YES | YES | YES | YES | YES |

# PART D: EU certification marks



### *1. Timeliness*

The timeliness for EU certification mark registration is not representative of the full process as these do not include the preparatory work required at the PG level. The preparatory work on drafting the product specification and actually setting up the scheme by a PG is the main goal of the exercise. Without this step, a PG cannot even file for a certification TM. For some products a challenge for defining the territorial link starts early on in the process, with the question arising as to how the region should even be defined[338]. Without a clear public/collective component, PGs will struggle to draft their own product specifications, thus setting the rules of all the potential users of the name. They may also fail to see the benefit of that effort.

### *2. Cost*

The cost for the PGs consists in application fees, the costs for creating/formalising the necessary control systems and the cost of creating the application documentation pack. While the latter may vary according to the choices of the PGs and local economic conditions, the basic fee for the application for a certification EUTM by electronic means is EUR 1500[339].

The EUIPO's (AGENCY) administrative costs for managing the lifecycle of the trade mark, including the tasks necessary before, during and after the registration (application, opposition, renewal, cancellation, appeal, recordals[340], etc.) of the IPR are monitored through the concept of a unit cost, calculated according to the rules published by the COM. The AGENCY monitored and published its workforce product unit costs in the institutional planning and reporting documentation[341]. The product workforce unit cost does not include any overhead costs. This indicator cost was around EUR 650 per unit of product. Therefore, one could surmise that the administrative costs for the complete lifecycle of a certification EUTM, after the legislative reform is effectively implemented, could reach similar values, excluding overhead costs (IT licences, office space, etc.).

Registering a craft and industrial GI through a certification TM would imply an additional condition regarding the use of the trade mark. This is not currently the case with the agricultural GIs, and that may give way to the possibility that a registered craft and industrial GI is challenged due to lack of use after a period of time has passed since its entry on the register. This requirement can add unnecessary burden and may prove challenging especially for the small producers at the moment when such proof of use may be requested.

Another aspect to be highlighted is the risk that with time certain names become generic should the proprietor not take appropriate action to defend its IPR against generic use, and that implies additional cost and effort.

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[338] See Study: Study: Economic aspects of geographical indication protection at EU level for non-agricultural products, 2020, p 72.
[339] https://euipo.europa.eu/ohimportal/en/fees-payable-direct-to-euipo
[340] A recordal is an entry in the EUIPO Register, the database containing particulars of all trade marks and designs registered by the EUIPO, which implies the amendment of certain information therein.
[341] https://euipo.europa.eu/ohimportal/en/annual-report, p. A6.

The costs to the AGENCY and MSs are not comparable, since the procedure will consist only in the examination of the TM, and not of the product specification (the GI scheme). Hence the mere cost of the TM registration could be, to the best extent, only comparable to any administrative fee that might be put in place for the GI scheme, which is highly unlikely, as the current agricultural GI scheme does not involve any administrative fee for the registration of a GI at EU level, and therefore the assumption is that there would be no administrative fee imposed to craft and industrial GI applications under a possible *sui generis* option (depending on the option chosen this may vary). In that respect it is clear that while under the TM option the PG would have to bear all the costs of setting up the scheme as well as the administrative fees of filing a TM and further enforcement, this burden would not exist in case of *sui generis* EU protection if comparison drawn to the current agricultural GI EU level scheme.

In conclusion, and under the assumption that the assessment of a craft and industrial GI under a *sui generis* option, would be assumed by the AGENCY, which is already in charge of trade marks, it can be clearly made that in both options the administrative burden for the AGENCY would be comparable.

Finally, when it comes to enforcement, it should be borne in mind that the enforcement efforts would be entirely the responsibility of the proprietor of the certification trade mark[342]. Many producers expressed concern with regard to the costs related to the use of the trade mark system. Although registration fees are not very high, enforcement costs have indeed proved to be quite significant for some producers who had to file oppositions and/or take legal actions against infringements of their trade mark rights. This comes in particular from the fact that a plaintiff in a trade mark case has the burden of proving that the defendant's use of a mark has created a likelihood of confusion for consumers about the origin of the product, which is difficult to demonstrate, especially in a foreign country. This appears to be a serious issue, in particular for small and medium-sized, enterprises which represent a large majority of the non-agricultural sectors covered by the study. Moreover, producers have to bear enforcement costs, without any support of public authorities[343].

### *3. Key advantages and main risks*

Two tables below present a number of key advantages and risks identified for the main stakeholders, considered for the purpose of this analysis paper, in the event that the protection of a craft and industrial GI IPR is instrumented by means of an EU certification trade mark.

[342] See Study on geographical indications protection for non-agricultural products in the internal market, 2013, p 40.
[343] See Study on geographical indications protection for non-agricultural products in the internal market, 2013, p 43-44, and p 96.

| Stakeholder | Key advantage |
|---|---|
| **For PGs** | User-friendly and efficient procedure to register a trade mark at EU level available. |
| **For MS** | Existing knowledge and practice for the MS currently offering this protection by means of certification trade marks. |
| **For the COM** | No administrative burden, economies of scale for the EU institutions, efficiency gains. |
| **For the AGENCY** | The AGENCY could make a significant contribution to the EU IPR system with relatively low additional costs after the legal instrument is effectively implemented. The AGENCY could also put its existing IT infrastructure to use, which would ultimately benefit the internal market (EU/MS level). |
| **For consumers** | Easy understanding of the use of a trade mark. |

| Stakeholder | Key risks |
|---|---|
| **For PGs** | High administrative and legal burden<br>High enforcement burden |
| **For MS** | No verification of the link with the geographical area<br>Proliferation of privately owned 'geographical terms' diluting the existence of cultural heritage (as provided for and expressed through geographically linked products and their relation to a particular area) |
| **For the COM** | No verification of the link with the geographical area<br>Legal uncertainty<br>No harmonisation for GIs on the EU level<br>No strengthening of GIs and *sui generis* IPR (impact on relations with non-EU countries, including promotion of GI policy) |
| **For the AGENCY** | N/A |
| **For consumers** | Risk of being mislead<br>No verification of the link with the geographical area by a public authority (no guarantee of the authenticity of the product's origin) |

# ANNEX 10: THE EU ENTITY TO ADMINISTER THE NEW EU GI SCHEME FOR CI PRODUCTS AT THE EU AND INTERNATIONAL LEVEL

This Annex provides a more detailed overview of the key aspects underpinning the preferred choice for the EU entity responsible to administer the new EU GI scheme for CI products at EU and International level (i.e. Commission outsourcing the administration of the EU CI GI scheme to an EU Agency, EUIPO). It also describes in detail the steps required to outsource the Role of Competent Authority in WIPO's Lisbon System for CI GIs to an EU agency (EUIPO), notably, revisiting Council Decision (EU) 2019/1754 and Regulation (EU) 2019/1753.

## 1. Some Key Aspects for the Policy Choice

The introduction of a new EU level GI scheme for non-agricultural (craft and industrial-CI-) products raises the question which EU entity should be in charge of the tasks arising from the new GI scheme registration process for CI products. Whether such EU entity would be the Commission or a specialised EU Agency like the EU Intellectual Property Office (EUIPO), taking into consideration prior acquired experience and capacity and in view of identifying the most efficient and effective authority.

The issue of the competent EU entity is also intrinsically linked to GIs being attached to the national cultural heritages and traditional know-how of Member States, who also play a role in the specialised EU Agency, as full members of the Management Board of EUIPO, together with the Commission and European Parliament representatives.

Some relevant **factors that can have an impact** on such crucial policy choice are **related to considerations which** derived from the creation of a new EU GI scheme, and the need to keep an approach which is consistent with the existing GI scheme for agricultural products, wine, spirits, etc., taking due account of the differences stemming from the nature of the products, and the respective EU policy considerations involved.

Policy considerations to take into consideration:

- *The replacement of national IPRs for CI GIs by an EU CI GI scheme.* Under the preferred option, the most favoured solution as proposed in the Impact Assessment foresees no co-existence between the new EU-level GI rights and rights provided for by parallel national systems. In this regard, the preferred option advocates for a system where national systems and GI titles are absorbed by the EU new scheme and there are no possible conflicts between the national and the EU level GI scheme. This would be coherent with the existing GI system for agricultural products being exhaustively and exclusively regulated at EU level
- *The role of national authorities in the context of a one-stage or two-stage procedures for the handling and registration of EU CI GIs*. Under the preferred option, the most favoured solution as proposed in the Impact Assessment would follow envisaging a two-stage registration process where the first stage entails national scrutiny of the product specifications and GI application by the GI producer carried out by national/regional authorities, and the second stage (decision on registration) is to be carried at the EU level by an EU entity. The choice of having a two-stage procedure is coherent with the existing set of sui

generis GI schemes provided for by EU legislation for agricultural products. Finally, the two-stage approach is considered beneficial as it preserves the local knowledge/expertise vested in respective MS and also due to the perceived familiarity of producer groups to the national authorities as their closest point of contact.

- The existing EU GI regimes for agricultural products, wines, spirits, etc… which is currently subject to a reform. In this regard, the Impact Assessment of DG AGRI points that **the reform of the EU GI schemes for agricultural products advocates for increased involvement of an existing EU agency in the registration process**.

- Another factor is that the capacity of an EU entity in charge of registration and the capacity to act as the EU's **Competent Authority in the Lisbon system** are substantively entwined and optimally, they should be kept together. An EU entity in charge of administering the EU legal scheme would be best placed to assess whether the same kind of IPRs from outside the EU should be recognised within the EU, as is case with the Lisbon system. This approach would be comparable to the trade mark and design systems, where the EUIPO is a registering Office for EU titles applied for directly to the Office or via WIPO's Madrid or Hague system. This way, the acquired expertise and resources could be utilised to their maximum. This includes the existing infrastructure as a communication channel between EUIPO and WIPO IT landscapes. Under Regulation (EU) 2019/1753, the Commission has been designated as the EU's Competent Authority in the Lisbon system. Nevertheless, provisions of the Geneva Act[344] allow for the possibility to transfer such capacity to an EU Agency (EUIPO) in respect of CI GIs or consider to have two different Competent Authorities. While it appears general practice that Lisbon Members designate a single authority which is the IP office/national agency in charge of IP matters, it is not precluded by the Lisbon provisions to differ from such general trend.

As further explained in Annexes 3 and 9, tasks of an EU entity to administer non-agricultural GIs in such double capacity would include:

- Managing the registration procedure, including examination, publication, oppositions, amendments, cancellations, and appeals;

- Liaising with WIPO for Lisbon/Geneva related applications, including: forwarding requests for international registrations of EU GIs, and receipt of notifications of international registrations for non-EU GIs seeking protection in

[344] Article 3 of the Geneva Act (Competent Authority): "Each Contracting Party shall designate an entity which shall be responsible for the administration of this Act in its territory and for communications with the International Bureau under this Act. The Contracting Party shall notify the name and contact details of such Competent Authority to the International Bureau, as specified in the Regulations."
Rule 4(2) of the Common Regulations: "[One Authority or Different Authorities] The notification referred to in paragraph (1) shall, preferably, indicate a single Competent Authority. When a Contracting Party notifies different Competent Authorities, this notification shall clearly indicate their respective competence in respect of the presentation of applications and other communications to, and the receipt of communications from, the International Bureau.

the EU as well as processing those international registration (i.e. assessment and decision on respective requests).

- Development and management of IT systems (i.e. back and front office) to support all of the above;
- Development and management of a CI GI eRegister.

## 2. The Preferred Policy Choice: an Existing EU Agency (EUIPO)

2.1 Arguments weighing in favour of EUIPO as the EU entity in charge are as follows:

- **EU internal market registration purposes:**

- The EUIPO is a **specialised EU agency to offer IP rights protection**. Its core business includes the registration of EU trade marks and EU registered designs and (on the basis of Article 152 EUTMR) managing cooperation activities with MS. By contrast, the Commission's role focuses on instigating and implementing EU policies. The tasks of an EU institution to administer CI GIs are focused on case by case administration of applications for protection, managing a register, dealing with fees and processing requests for procedures related to specific rights. As pointed in Annex 9, the Commission (DG GROW) does not have either the experience or the required expertise to handle a registration process for GI applications. In addition, the Commission lacks the necessary resources to assess and manage these processes as part of its daily tasks. Furthermore, the EUIPO has the experience, the expertise and the IT tools that could extend to support the new IP right (instead of building new tools).

- **EU level or potentially EU-wise IP rights are overwhelmingly granted by specialised agencies such the EUIPO, the EPO and the CPVO** (Community Plant Variety Office).[345] These offices have specially trained staff dealing with case-based files and in daily touch with applicants or right holders as their normal clientele. While DG AGRI is the historic EU entity dealing with agricultural GIs and equipped with all appropriate technical specialisation and expertise, this situation is untypical for IPRs, and for DG GROW, and it does not currently extend to established routines covering CI GIs.

- The development of **agricultural GIs** is **closely related to the EU's common agricultural and rural development policy**. In respect of agricultural GIs, it is the Commission to be in charge even if in the later years a Pilot project to delegate the registration assessment to EUIPO has been put in place, and the current ongoing reform foresees also delegating to EUIPO some of the registration steps/procedures. The fact that DG AGRI has been acting as EU institution responsible for GI registration, is mainly due to historical and policy reasons stemming from the EU's exclusive competence on agricultural GIs and

[345] Further examples of agencies involved in other policy areas where EU rights are granted include EMA, ECHA and EFSA.

the EU's common agricultural policy together with its link to the rural policy area. Most of the agricultural GI protected titles cover agricultural products that are subject to EU harmonised product legislation. This is different for CI products, which may not be subject to EU harmonised product legislation and therefore may be subject to the general product safety legislation (GSPD). The COM does not exert direct control over their safety and healthy requirements, as opposed to agricultural products. A newly created system does not necessarily have to be tied by the roots of its agricultural counterpart when it comes to the role of the EU authority responsible.

- **Agricultural GIs are linked to food law and health concerns,** and require stringent checks and controls; whereas craft and industrial GIs are more related to reputation alone, which brings them closer to the classic domain of an IP Agency.

- In case of a two-phased registration procedure involving a national phase, the EUIPO could also rely on its **extensive expertise and network in the field of cooperation with national IP authorities**. That kind of practical routine within the Commission is currently limited to national agricultural authorities and would have to be established at a different operational level in respect of national authorities dealing with CI GIs.

- In several countries, including some EU Member States that provide GI protection for CI products at national level, **a divide in competence between agricultural and CI GIs is familiar**, where the ministry of agriculture deals with agricultural GIs and the IP office with non-agricultural or CI GIs[346]. A similar divide between the Commission (in its retained role after the AGRI reform) for agricultural GIs and EUIPO for CI GIs would thus not strike as unusual.

- The EUIPO has resources for, and extensive knowledge and experience in, three critical aspects of the IPRs before, during and after registration lifecycle: the operational management, including consistency and predictability practice building; IT tools development and maintenance; and collaborative working with staff from the EU MS within the EU IP Network. Considering the amount of potential synergies between CI GIs and TMs and DS procedures, the impact on the EUIPO's budget is expected to be limited while the impact on the Commission's budget under this preferred policy choice is null.

- By appointing EUIPO, further efficiency gains would be achieved by using EUIPO's appeal body (Boards of Appeal), thus eliminating a need to create a new structure in COM/DG GROW to handle CI GI related appeals. This would allow for legal certainty for the producer groups by re-using the consistency seeking mechanisms in place in the EUIPO's Boards of Appeal. Finally, this approach would provide for an integrated IPR system, by joining and reusing first and second instance efficient customer driven procedures for several IP rights.

[346] According to the 2013 legal study, such countries are: Bulgaria, Czechia, Estonia, Hungary, Latvia, Poland, Portugal, Romania, Slovakia and Slovenia. France is now in a similar situation.

- **EU International registration purposes:**

  As regards the **role of Competent Authority in the Lisbon system**, the EUIPO currently has the same capacity in respect of two other international registration systems administered by WIPO: the Madrid system for trade marks and the Hague system for designs. Handling the interface with international systems requires **familiarity with highly specific procedures and with the operation of WIPO's International Bureau and registries**. EUIPO has the valuable asset of institutional knowledge in this regard. Therefore, the **EUIPO would be better suited to carrying out tasks related to such role as well**.

  2.2 Possible arguments in favour of the Commission as the EU Institution responsible:

  Looking at the other side of the coin, possible arguments in favour of the Commission as the EU institution in charge could be:

- **EU internal market registration purposes:** Agricultural GIs are administered by the Commission, which is a tradition rooted in exclusive EU competence and historic reasons relating to agricultural policy. EU Member States are accustomed to deal with their GI issues in Brussels. Given the close link with national cultural heritages and traditional know-how, there is political prestige attached to the place of EU level business settled in Brussels.

  *In this context, it appears crucial to highlight that the reform of the EU GI schemes for agricultural products advocates increased involvement of an existing EU agency in the registration process.*

- With the creation of a new GI scheme for non-agricultural products, the EU's GI regime should preferably retain a uniform approach to all GIs. Traditions in the EU related to this particular IP title would point in the direction of keeping all GIs tied to the same venue of administration, that is, the Commission.

  *In this respect, it is relevant that according to the most favoured solution proposed in the Impact Assessment, some elements of the new GI scheme for craft and industrial products would in any case have to divert from the uniform approach/umbrella provisions due to significant differences between agricultural and craft and industrial products.*

- There is institutional knowledge within DG AGRI to deal with special characteristics of GIs as IPRs (such as assessing title-specific eligibility criteria or practically dealing with product specifications). Institutional knowledge also encompasses any kind of multiple phases within the registration procedure, whether in cooperation with national authorities or in the framework of special operational schemes of cooperation within the Commission. All that existing institutional knowledge could be more optimally transferable within the Commission services than in the case of outsourcing to EUIPO.

  *Again, it needs to be considered that the reform of the EU GI schemes for agricultural products advocates for an increased involvement of an existing EU agency in the registration process. In any case, such institutional knowledge has been gradually transferred to EUIPO, which has already been tested under the*

*pilot carried out by DG AGRI and EUIPO would therefore be prepared to extend it to craft and industrial products.*

- **EU International registration purposes:**

- As regards the role of Competent Authority in the Lisbon system, the Commission has started to gather practical experience following accession to the Geneva Act. Although the Commission's aptitude in handling daily operational ties with WIPO's International Bureau is yet to be tested in practice in the longer run, it would be simpler for both WIPO and third country Lisbon members to deal with one and the same EU institution in charge of all GIs.

  *In this respect it appears relevant to note that the Commission's experience has entailed considerable challenges implying time consuming exercises straining human resources in the relatively short time since the EU's accession to the Geneva Act became operational. At the same time, it cannot be excluded that new trends as prompted by the AGRI reform could potentially imply some openness to reconsider whether the Commission should retain its role of Competent Authority altogether or keep it only for agricultural GIs.*

Based on all the complex considerations taking into account the factors outlined above, it appears that **an existing EU Agency (EUIPO) would be better suited to take up the role as EU entity in charge of managing the EU-level stage of the registration process under a new EU GI scheme for non-agricultural products**.

### 3. Implementation of the Preferred Choice as to the Role of Competent Authority in the Lisbon System: Revisiting Council Decision (EU) 2019/1754 and Regulation (EU) 2019/1753

The interface between current EU legislation on GIs and the international instrument (Geneva Act of the Lisbon Agreement) is addressed by Council Decision (EU) 2019/1754 and Regulation (EU) 2019/1753, regulating EU action following accession to the multilateral registration system. As mentioned above, currently the Commission is the Competent Authority designated by the EU responsible for the administration of the Geneva Act (Art. 4 of Decision 2019/1754, Art. 3 of the Geneva Act).

This **role could be shifted to EUIPO in two possible ways**:

- By amending this provision in the Regulation to state that in respect of non-agricultural GIs the **EUIPO is the Competent Authority**, and by notifying WIPO accordingly. (This would be accompanied by creating a definition or reference to what „CI geographical indications" means, which could be useful in the case of other amendments, too.)

- By formally leaving the role of Competent Authority with the Commission and **designating EUIPO as the assisting institution in a similar way as Committees listed in respect of agricultural GIs** (Art. 15 of the Regulation, „Committee procedure").

In both cases, the role of Competent Authority in the Lisbon system should follow from the role of EU entity deciding on the registration of CI GIs. The latter capacity should be established and detailed by legislation on the new EU GI scheme.

**The former option for adjusting the interface with Lisbon appears a simpler and better choice.** EUIPO has the same position in respect of EU Trade Marks and EU Registered Designs already.

As highlighted in the Impact Assessment, the **EU's Competent Authority has two roles**:

- „Outbound": File international applications to WIPO's International Bureau to seek protection for registered EU GIs in third countries, which now becomes possible for CI GIs (Article 2(1) of the Regulation).
- „Inbound": Assess third country GIs registered in the International Register. This becomes a more substantial role where administration of systemic refusal by means of a simplified procedure is replaced by a real and effective examination process.

**In both contexts, appropriate corresponding amendments in the Regulation are called for in view of the preferred choice of shifting the role of Competent Authority to EUIPO.**

*A. Changes in provisions on filing international applications to WIPO*

Article 2(1) of the Regulation focuses on **three issues** to regulate the „outbound" action:

- Repeating a provision in the Decision that the Commission is the Competent Authority, while also limiting filing action to agricultural GIs. **EUIPO needs to be introduced as the Competent Authority in respect of CI GIs, either using the same reference to the term „non-agricultural geographical indications" as envisaged in Article 4 of the Decision, or making new references in both instances to "crafts and industrial products".** The reference to GIs „protected and registered under Union law" could strictly speaking be considered obsolete[347] and as such deleted, but it appears appropriate to leave it in place in this specific case, as it would now only confirm that outbound action is only possible on the basis of EU level registrations.
- **Member States' requests** to register their GIs in the International Register and on what basis they can make such requests. Here, **it is to be clarified that in respect of non-agricultural or** CI **GIs requests are to be made to EUIPO and not to the Commission**.
- The **form of action taken** to achieve an international filing is an **implementing act** in case of the Commission for agricultural GIs. **It has to be clarified that EUIPO does not need to adopt an implementing act but simply proceeds on the basis of its own decision on granting protection** for a non-agricultural or CI GI.

[347] This term was originally used to also tacitly limit the opportunity of filing action to existing EU GI schemes for agricultural products.

*B. Changes in provisions remodelling the examination procedure*

The current model of systemic refusal of CI GIs from other countries party to the Geneva Act in a simplified procedure is based on the elimination of at least three stages of normal routine applicable for agricultural GIs (where protection is in fact available): the elimination of publication, opposition and substantive examination. Logically, remedy against the refusal is also eliminated.[348]

A real and effective examination procedure can be remodelled as follows:

- Following the notification of an international registration by WIPO's International Bureau, the assessment of the product is no longer necessary to decide if it relates to a non-agricultural or CI GI (Art. 4(1)(b) and Art. 5(2) of the Regulation).
- **Publication will have to follow** (Art. 4(1)(b) of the Regulation). The application for international registration has to open up for opposition by admissible opponents. Publication no longer needs to require that the international registration "relates to a product in respect of which protection at Union level of geographical indications is provided". This results in the deletion of Article 4(1)(b) of the Regulation and the simplification of Article 4(1) to a single sentence.
- **It should be EUIPO to publish** in respect of CI GIs, "replacing" publication in the Official Journal by the Commission. **This needs to be stated in revised Art. 4(1).**
- **Details of the publication by EUIPO may be further addressed in interface provisions of the new legislation on CI GIs if necessary.** For example, Article 190 of the EUTMR provides for the publication of more information in the same context[349]. If such additional rules are needed outside the Regulation, a reference can be inserted in the Regulation accordingly.

[348] This follows not from the Regulation but from Article 15(5) of the Geneva Act: [National Treatment] Each Contracting party shall make available to interested parties affected by a refusal the same judicial and administrative remedies that are available to its own nationals in respect of the refusal of protection for an appellation of origin or a geographical indication.

[349] 1. The Office shall publish the date of registration of a mark designating the Union pursuant to Article 3(4) of the Madrid Protocol or the date of the subsequent designation of the Union pursuant to Article 3ter(2) of the Madrid Protocol, the language of filing of the international application and the second language indicated by the applicant, the number of the international registration and the date of publication of such registration in the Gazette published by the International Bureau, a reproduction of the mark and the numbers of the classes of the goods or services in respect of which protection is claimed.
16.6.2017 L 154/80 Official Journal of the European Union EN.
2. If no refusal of protection of an international registration designating the Union has been notified in accordance with Article 5(1) and (2) of the Madrid Protocol or if any such refusal has been withdrawn, the Office shall publish this fact, together with the number of the international registration and, where applicable, the date of publication of such registration in the Gazette published by the International Bureau.

- Article 5(1) of the Regulation sets out requirements as to the **assessment following publication**. The safeguard relating to "a product in respect of which protection at Union level of geographical indications is provided" is obsolete and can be deleted. At the same time, EUIPO needs to be mentioned as a possible player **carrying out the assessment.**

- The time limit for assessment under Article 5 is 4 months from the date of the international registration (Art 5(2) of the Regulation).

- **Opposition becomes possible for a rule,** and not only in the case of publication by mistake as in the old model on the basis of a specific ground (Art. 6(2)(e) of the Regulation). Eligible opponents (Art. 6(1) of the Regulation), the grounds of opposition (Art. 6(2) of the Regulation) and the time limit for opposition (four months from the date of publication) are the same for all GIs. However, the special ground for opposition listed in Art. 6(2)(e) that "the geographical indication registered in the International Register relates to a product in respect of which protection at Union level of geographical indications is not provided" becomes obsolete and is deleted. At the same time, **EUIPO needs to be mentioned as a possible actor to receive and assess oppositions in Art. 6(1) and 6(3).**

- **The decision on grant or refusal of protection (Art. 7 of the Regulation)**

- It is based on the assessment carried out pursuant to Art. 5 if conditions laid down are not fulfilled.

- In respect of agricultural GIs the decision is adopted by the Commission, with the assistance of the committees competent for wine-sector products, aromatised wine products, spirit drinks and agricultural products and foodstuffs, as listed in Art. 15(1) of the Regulation. **It needs to be specified that in respect of non-agricultural GIs, the decision is adopted by EUIPO. (Article 7(1) and 7(2) of the Regulation)**

- **Notification of refusal** to the WIPO IB (Art. 15 of Geneva Act) has to take place within **one year** from the receipt of the notification of the international registration (**Art. 7(4) of the Regulation).** Art. 5 of the Decision and the EU's declaration in the notification of the instrument of accession sought an extension by one year of this time limit of one year referred to in Article 15(1) of the Geneva Act. However, according to Article 29(4) of the Geneva Act, this extension would only have applied to third country GIs already registered **under the Geneva Act** before the EU's accession. As the EU's accession coincided with the entry into force of the Geneva Act, there were no such GIs. Therefore, the general time limit of one year applies to the EU's notifications of refusal. In any event, **EUIPO needs to be mentioned as a possible actor to notify a refusal of protection**.

- Formal requirements about the decision on either grant of protection (Article 7(3) of the Regulation) or refusal of protection (Article 7(4) of the Regulation) apply for all GIs.

- **Remedy** available against refusal (Art. 15(5) of Geneva Act): the EU has to provide the same remedy as to its „own nationals", that is, **as provided for in**

**new legislation on CI GIs**. The Regulation is tacit on this issue, which is sustainable. However, a decision on refusal of protection normally contains information on the availability of such remedy.

- When EU level protection for non-agricultural GIs becomes available, all registrations relating to third country non-agricultural GIs necessarily refused protection until that moment in time will have to be revisited. The opportunity of this is secured by the possibility of **withdrawal of refusal** (**Art. 7(5) of Regulation**, Art. 16 of the Geneva Act):

- In whole or in part;
- By means of an implementing act adopted by the Commission (in the same way as the decision on refusal);
- Notification of the WIPO IB has to take place without delay.

The flexibility here is significant, as there is no time limit for such subsequent step, by means of which EU level protection can be granted in a later stage.

**There is need to mention EUIPO as potential actor in respect of "new refusals" notified by EUIPO** (and not the Commission under the old model).

The question arises whether such **withdrawal** could take place **in case of "new refusals" by EUIPO** under the very same conditions as those specified in Article 7(5) of the Regulation. It appears that the opportunity for the Commission to withdraw a refusal **on its own initiative** (without a duly substantiated request by a Member State, a third country or a natural or legal person having a legitimate interest) was secured with a view to the possible extension of EU level protection to non-agricultural GIs. If the EUIPO is not supposed to have such opportunity, it should be reflected in the text of Article 7(5) of the Regulation.

## ANNEX 11: INTERPLAY BETWEEN EXISTING NATIONAL SYSTEMS/ FUTURE EU SYSTEM

As indicated in the policy options described in Section 5 of the Impact Assessment, the establishment of an EU wide protection system raises the issue to which extent existing national GI protection systems should co-exist in parallel. In principle, **both co-existence as well as the replacement of the national GIs by the EU framework are conceivable**.

Two fundamental objectives should be achieved. GIs currently protected at national level should not lose protection. Regulatory conflicts and overlaps between the EU and the national levels should be avoided.

Given the current heterogeneous protection of GIs for crafts and industrial products, **co-existence** would imply harmonization. Harmonisation would be needed in order to clarify the relationship between EU and national protection levels, avoid legal uncertainty as well as facilitate trade and create equal protection conditions within the Internal Market.

In contrast to trade mark and design laws, current GI protection at national level is based on various regulatory approaches. Only 16 Member States protect GIs for CI products by *sui-generis* (specific) laws (see Annex 8 Overview of National *sui generis* GI laws available for the protection of crafts and industrial products). The others base the protection on trade mark law, unfair competition and consumer protection. As a result, a meaningful approximation of GI protection at national level would imply that certain Member States are required to establish a full new regulatory system for national GIs in addition to complying with the new EU sets of rules aiming to establish the EU GI title and system.

Harmonisation might therefore create a disproportionate amount of regulatory and administrative burden, particularly on these Member States. In addition, harmonisation would also require continuous investment to maintain convergence between national protection systems as the establishment of the harmonized trade mark system has shown. EUIPO estimates that an effort of a minimum of five full time equivalents (FTEs) are currently invested across the EU Intellectual Property Network (EUIPN) on a yearly basis in the maintenance of convergence of practices and keeping the stakeholders informed and engaged. Finally, having two parallel systems at EU and national levels instead of one EU system adds to the administrative landscape and might carry the risk of confusing consumers and producers.

The alternative to co-existence and harmonisation is the **replacement of national GIs by the EU framework.** This approach has the advantages of creating a unique regulatory framework throughout the Internal Market creating legal certainty as well as predictable and relatively low costs for producers. Moreover, an EU framework will permit the development of geographical indications since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers' eyes.[350]

[350] Cf. Recital 7 of the Regulation (EEC) N° 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

The replacement of national GI protection by an EU GI would be consistent with the fundamental right to property as set out in Article 17 of the Charter on fundamental rights of the EU, including the right to intellectual property enshrined in paragraph 2 of this provision. By replacing the national protection schemes, the new EU framework would not remove protection, but offer producers an even more extensive protection throughout the EU instead. There would be no need to create rules to avoid regulatory conflicts and overlaps between the EU and the national levels. In addition, the new EU regulatory framework would serve as connection and basis with the Lisbon system giving access to international protection.

Concretely, after the entry into force of the EU wide regulatory framework, national GIs should continue being protected during a reasonable **transition period**. During this period, national authorities should communicate the information necessary for registration to the competent EU body. Member States may maintain national protection of these GIs until a decision on registration has been taken. Those Member States not granting IP protection for GIs should inform this EU body which of their names established by usage they wish to register.[351]

Any name sent for registration should fulfil the eligibility requirements, such as the link between product qualities and the geographical origin as set out in the new EU framework. In addition, each application should include a product specification describing notably the name of the product, the characteristic production processes and / or its characteristic raw materials as well as the definition of the geographical area.

The applications will be examined by the designated EU body. During the transition period, there should be no possibility for Member States or third parties to object to a registration.

This approach would be consistent with the establishment of the regulatory framework for GIs protecting agricultural products, as foreseen in particular in Article 17 of the Regulation (EEC) N° 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

[351] This approach had been pursued with the establishment of the regulatory framework for GIs protecting agricultural products, see Article 17 of the Regulation (EEC) N° 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

# ANNEX 12: COHERENCE OF OPTIONS WITH OTHER EU POLICY OBJECTIVES

Table 7.3 Coherence of option with other EU policy objectives

| | PO1: Extending the existing EU GI regime to CI products | PO3: Trade mark reform | PO2: Self-standing EU Regulation |
|---|---|---|---|
| **Coherence with other EU objectives** | | | |
| Principle of free movement of goods | ++<br>Yes, allow for free movement of goods<br>Yes, GI right is open to all producers complying with the product specification | +<br>Yes, allow for free movement of goods<br>But, right restricted to a group of producers owning the trade mark or allowed to use it (through license, right to use certification mark) | ++<br>Yes, allow for free movement of goods<br>Yes, GI right is open to all producers complying with the product specification |
| Right to property[352] | ++<br>Yes, creates an intangible EU-wide IPR which is part of the right to property<br>Yes, collective nature of IPR held by producers complying with the product specification fully reflected | +<br>Yes, creates an intangible EU-wide IPR which is part of the right to property<br>But, collective nature of IPR held by producers complying with the product specification not fully reflected | ++<br>Yes, creates an intangible EU wide IPR which is part of the right to property<br>Yes, collective nature of IPR held by producers complying with the product specification fully reflected |
| **Coherence with other EU instruments** | | | |
| EU trade marks | ++<br>Yes: EU trade mark legislation would not be disrupted to accommodate additional special requirements relating to geographically rooted product quality | -<br>No: EU trade mark legislation would be disrupted by inserting additional special requirements relating to geographically rooted product quality | ++<br>Yes: EU trade mark legislation would not be disrupted to accommodate additional special requirements relating to geographically rooted product quality |
| EU rules protecting *sui generis* geographical indications for agricultural products | +<br>Different nature and policy context of agricultural and CI products problematic to properly reflect | -<br>Inconsistency between providing *sui generis* protection for agricultural GIs and EUTM protection for CI products<br>Narrower scope of IP protection for CI products as compared to agricultural products | ++<br>Yes, AGRI GI protection schemes cover agricultural products, while PO2 covers CI products<br>Integrity of the existing EU GI regime fully safeguarded<br>Synergies across the GI schemes sustainable |
| National and regional schemes | +<br>Extended EU-wide GI protection coherent with absence of national protection of agricultural GIs | +<br>Coherent with TM protection in some Member States | +<br>Yes, EU-wide sui generis GI protection coherent with national sui generis GI protection in some Member States |
| Other IP instruments (Designs) | ++<br>Yes, Designs protect the appearance of a product, while PO1 protects the link between its characteristics and its geographical origin | ++<br>Yes, Designs protect the appearance of a product, while PO3 protects the indication of its commercial origin | ++<br>Yes, Designs protect the appearance of a product, while PO2 protects the link between its characteristics and its geographical origin |

[352] See the Charter for fundamental rights of the EU (Official Journal of the EU 2007/C 303/01), Article 17.

| | | | |
|---|---|---|---|
| Wider EU policies (international agreements) | ++<br>Yes, EU-wide protection under PO1 coherent with the obligation to provide protection for CI GIs originating in countries party to the Geneva Act of the Lisbon Agreement<br><br>Yes, consistency providing the same *sui generis* GI protection for agricultural and CI products under the Geneva Act of the Lisbon Agreement<br><br>Yes, consistency with the EU's leading role in advocating the highest possible protection for all GI products (WTO and WIPO) | -<br>No, difficulty in meeting requirements relating to the scope of protection to be provided under the Geneva Act of the Lisbon Agreement<br><br>No, inconsistency between providing *sui generis* protection for agricultural GIs and EUTM protection for CI products under the Geneva Act of the Lisbon Agreement<br><br>No, inconsistency with the EU's leading role in advocating the highest possible protection for all GI products | ++<br>Yes, EU-wide protection under PO2 coherent with the obligation to provide protection for CI GIs originating in countries party to the Geneva Act of the Lisbon Agreement<br><br>Yes, consistency providing the same *sui generis* GI protection for agricultural and CI products under the Geneva Act of the Lisbon Agreement<br><br>Yes, consistency with the EU's leading role in advocating the highest possible protection for all GI products (WTO and WIPO) |
| EU policies to support preservation of intangible cultural heritage skills | ++<br>Specific GI protection is acknowledged as preserving and developing cultural heritage both in the agricultural and the craft and industrial areas | +<br>Protect more commercial interest than common, in particular cultural heritage | ++<br>Promote preservation of know-how as an important part of European heritage |
| Actions aiming to promote sustainable tourism | ++<br>Enhances the visibility of products (impact on regions)<br><br>Encourages producers to cooperate with each other and also with local authorities | +<br>Provides a limited collaborative environment (more focused on private interest than on public interest) | ++<br>Enhances the visibility of products (impact on regions)<br><br>Encourage producers to cooperate with each other's and also with local authorities + |
| The Work Plan for Culture 2019-2022 selects gender equality as one of the five sectoral priorities for EU action | ++<br>Yes, compatible with gender equality promotion | ++<br>Yes, compatible with gender equality promotion | ++<br>Yes, compatible with gender equality promotion |
| Innovation and competition policies | ++<br>Yes, a harmonised IP system for CI products would be beneficial for innovation and could help cooperation of producers<br><br>Yes, through linkage with a geographical area benefits also related industries such as tourism, with positive impacts on regional economy and jobs, facilitating recovery | +<br>Yes, a harmonised IP system for CI products would be beneficial for innovation and could help cooperation of producers | ++<br>Yes, a harmonised IP system for CI products would be beneficial for innovation and could help cooperation of producers<br><br>Yes, through linkage with a geographical area benefits also related industries such as tourism, with positive impacts on regional economy and jobs, facilitating recovery |

# ANNEX 13: COST CALCULATIONS

**Disclaimer: Cost estimation should be treated with caution as they are based on assumptions made by contractor (AND International & VVA, 2021) on the basis of research, surveys and interviews. These are average estimation of cost and the actual cost may vary with the size of the producer, complexity of the product and production method as well as individual choices as regards control and certification. These cost estimations, however, allow for comparison of different options on common basis.**

Assumptions are presented in Annex 4.

**Table A13.1** Summary of cost of CI GI protection under PO1

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 7 500 | 20 000 | 42 500 |
| Verification/Control* | 6 000 | 600 | 0 | 6 600 |
| Enforcement & management** | 3 000 | 3 900 | 9 000 | 15 900 |
| Total | 24 000 | 12 000 | 29 000 | 65 000 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.23 | 0.60 | 1.28 |
| Verification/Control* | 0.18 | 0.02 | 0.00 | 0.20 |
| Enforcement & management** | 0.09 | 0.12 | 0.27 | 0.48 |
| Total | 0.72 | 0.36 | 0.87 | 1.95 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 for assumptions.

**Table A13.2.** Summary of cost of CI GI protection under PO3

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 7 650 | 0 | 1 500 | 9 150 |
| Verification/Control* | 6 000 | 0 | 0 | 6 000 |
| Enforcement & management** | 3 000 | 0 | 0 | 3 000 |
| Total | 16 650 | 0 | 1 500 | 18 150 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.23 | 0.00 | 0.05 | 0.27 |
| Verification/Control* | 0.18 | 0.00 | 0.00 | 0.18 |
| Enforcement & management** | 0.09 | 0.00 | 0.00 | 0.09 |
| Total | 0.50 | 0.00 | 0.05 | 0.54 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 for assumptions.

## PO2 – Self-standing EU Regulation

Below costs of selected combinations of sub-options:

**Table A13.3.** Summary of cost of CI GI protection under 2.2B One stage system: EU level only + 2.3A The European Commission at the EU level + 2.4A (control and enforcement of PO1)

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 0 | 20 000 | 35 000 |
| Verification/Control* | 6 000 | 600 | 0 | 6 600 |
| Enforcement & management** | 3 000 | 3 900 | 0 | 6 900 |
| Total | 24 000 | 4 500 | 20 000 | 48 500 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.00 | 0.60 | 1.05 |
| Verification/Control* | 0.18 | 0.02 | 0.00 | 0.20 |
| Enforcement & management** | 0.09 | 0.12 | 0.00 | 0.21 |
| Total | 0.72 | 0.14 | 0.60 | 1.46 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 for assumptions.

**Table A13.4.** Summary of cost of CI GI protection under 2.2A Two stage system national and EU + 2.3A The European Commission at the EU level + 2.4A (control and enforcement of PO1)

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 7 500 | 20 000 | 42 500 |
| Verification/Control* | 6 000 | 600 | 0 | 6 600 |
| Enforcement & management** | 3 000 | 3 900 | 0 | 6 900 |
| Total | 24 000 | 12 000 | 20,000 | 56 000 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.23 | 0.60 | 1.28 |
| Verification/Control* | 0.18 | 0.02 | 0.00 | 0.20 |
| Enforcement & management** | 0.09 | 0.12 | 0.00 | 0.21 |
| Total | 0.72 | 0.36 | 0.60 | 1.68 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 for assumptions.

**Table A13.4.** Summary of cost of CI GI protection under 2.2.A Two stage system national and EU + 2.3.B EUIPO at the EU level + 2.4.A (control and enforcement of PO1)

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 7 500 | 17 000 | 39 500 |
| Verification/Control* | 6 000 | 600 | 0 | 6 600 |
| Enforcement & management** | 3 000 | 3 900 | 0 | 6 900 |
| Total | 24 000 | 12 000 | 17 000 | 53 000 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.23 | 0.51 | 1.19 |
| Verification/Control* | 0.18 | 0.02 | 0.00 | 0.20 |
| Enforcement & management** | 0.09 | 0.12 | 0.00 | 0.21 |

| | | | | |
|---|---|---|---|---|
| Total | 0.72 | 0.36 | 0.51 | 1.59 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 for assumptions.

**Table A13.5.** Summary of cost of CI GI protection under 2.2.A Two stage system national and EU + 2.3.B EUIPO at the EU level + 2.4.B Streamlined control with a strong enforcement model. The preferred option

| **Action** | **Producers (group)** | **Authorities** | | **Total** |
|---|---|---|---|---|
| | | **National** | **EU** | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 7 500 | 17 000 | 39 500 |
| Verification/Control* | 5 700 | 100 | 0 | 5 800 |
| Enforcement & management** | 3 000 | 3 900 | 0 | 6 900 |
| Total | 23 700 | 11 500 | 17 000 | 52 200 |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0.23 | 0.51 | 1.19 |
| Verification/Control* | 0.17 | 0 | 0 | 0.17 |
| Enforcement & management** | 0.09 | 0.12 | 0 | 0.21 |
| Total | 0.71 | 0.35 | 0.51 | 1.57 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 4 for assumptions.

# ANNEX 14: COMPARISON OF IMPACTS OF SUB-OPTIONS OF OPTION 2

The tables below summarize impacts of different sub-options of Option 2.

**Table A14.1.** Summary of cost of CI GI protection under PO2

| Action | Producers (group) | Authorities | | Total |
|---|---|---|---|---|
| | | National | EU | |
| **Annual Cost of one GI (EUR)** | | | | |
| Registration* | 15 000 | 0 (2.2B) – 7 500 (2.2A) | 17 000(2.3B) – 20 000 (2.3A) | 32 – 42.5k |
| Verification/Control* | 5 700(2.4B) - 6 000(2.4A) | 100(2.4B) – 600(2.4A) | 0 | 5.8-6.6k |
| Enforcement & management** | 3 000 | 3 900 | 0 | 6.9k |
| Total | 23.7 (2.4B)– 24k(2.4A) | 4 – 12k | 17(2.3B) – 20k(2.3A) | 44.7-56k |
| **Annual Cost of 30 GI (EUR million)** | | | | |
| Registration* | 0.45 | 0-0.23 | 0.51-0.6 | 0.96 – 1.28 |
| Verification/Control* | 0.17-0.18 | 0-0.02 | 0 | 0.17-0.2 |
| Enforcement & management** | 0.09 | 0.12 | 0 | 0.21 |
| Total | 0.71-0.72 | 0.12-0.36 | 0.51-0.6 | 1.34-1.68 |

** One-off cost; ** recurrent cost*

*Source:* Own calculations based on VVA & AND International (2021), supra note, p.160, producer group assumed to compose of 10 members. See Annexes 34 and 13 for detailed calculations and assumptions.

**Table A14.2** Comparison of policy sub-options against effectiveness and efficiency criteria

| Option | Effectiveness (contribution to achieving objectives) | | | | Efficiency (costs and benefits) |
|---|---|---|---|---|---|
| | Applicant friendly and affordable registration system | Effective and affordable system of: | | Low cost for public authorities | |
| | | control | enforcement | | |
| **Baseline** | **0** | 0 | 0 | 0 | **0** |
| **2.2. Involvement of national authorities in the registration procedure** | | | | | |
| (A) Two stage | 2.2A (++) Registration at no or low cost with local authorities who provide additional support to producers (form filling, collaboration building) (as in PO1); | N/A | N/A | (-) additional costs for MSs that do not have and (0) no costs for MS that have *sui generis* GI system in place | Registration cost for national authorities: EUR7,500 per GI; Cost at EU level at EUR17,000 (2.3B) or EUR20,000 (2.3A) per GI registered |
| (B) One stage | (+) potential problems for micro producers if local authorities do not engage (as in PO3) | N/A | N/A | (0) no costs for MSs that do not have and (+) savings for MS that have *sui generis* GI system in place | No registration cost for national authorities; Cost at EU level at EUR17,000 (2.3B) or EUR20,000 (2.3A) per GI registered |
| **2.3 EU entity in charge of registration at EU level and at international level** | | | | | |
| (A) Commission | N/A | N/A | N/A | (--) high cost of COM registration; | Cost at EU level at EUR20,000 per GI |

| Option | Effectiveness (contribution to achieving objectives) | | | | Efficiency (costs and benefits) |
|---|---|---|---|---|---|
| | Applicant friendly and affordable registration system | Effective and affordable system of: | | Low cost for public authorities | |
| | | control | enforcement | | |
| | | | | | registered |
| (B) EUIPO | N/A | N/A | N/A | (0/-) more efficient than (A) | Cost at EU level at EUR17,000 per GI registered |
| **2.4 Control & enforcement** | | | | | |
| (A) Agri GI | N/A | (+) Strict control based on third party assessment high benefit to customers (as in PO1); | (++) authorities enforce out of their own initiative, high benefit to producers | (--) High cost of both control and enforcement system | Control cost for national authorities at EUR600 per GI;<br>Enforcement cost at EUR3,900 per GI |
| (B) self declaration | N/A | (++) lower cost, comparable effectiveness to (A) | | (+) lower cost of control due to random checks, | Control cost for national authorities at EUR100 per GI;<br>Enforcement cost at EUR3,900 per GI |
| **2.5. Co-existence of EU and national titles and regimes** | | | | | |
| (A) Replace | | | | (+) lower cost for national authorities | |
| (B) Coexist | | | | (0) | |

Legend: ++ significant positive impact; + positive impact; **0** neutral; **-** negative impact; **--** significant negative impact;

**Table A14.3** Comparison of the impact of viable policy sub-options on stakeholders

| | CI Producers group* | National administration | EU administration | Citizens |
|---|---|---|---|---|
| **Baseline** | 0 | 0 | 0 | 0 |
| **Option 2 (preferred combination)** | Borrowed reputation of Agri GI system, voluntary use of PGI logo; producers in 16 MS already familiar with system. Public enforcement lowers burden | High support to local producers; with lower enforcement cost (2.4B) could result in strong growth of niche markets + promotion of region | Use of existing expertise of EUIPO (2.3B) – self financing option | (++) quality assured by system similar to Agri, voluntary use of same logos as in Agri; Important for those placing value on local production and heritage |
| **Benefits** | Potential for higher prices by up to 20%-50% and higher demand by 20-30%; or even 100% free enforcement by public authorities; | | | (++) Assured quality and local origin (unquantifiable) |
| **2.2. Involvement of national authorities in the registration procedure** | | | | |
| **(A) Two or** | N/A | (+) local authroties involved (as in PO1) but more streamlined due to no COM just EUIPO; | N/A | N/A |
| **(B) One stage** | N/A | (0) no legal incentives for involvement of local authorities (as in PO3) | N/A | N/A |
| **Costs per GI** | n/a | (A): EUR 7,500<br>(B): EUR 0 | | |

| | CI Producers group* | National administration | EU administration | Citizens |
|---|---|---|---|---|
| **2.3 EU entity in charge of registration at EU level and at international level** | | | | |
| **(A) EU** | N/A | N/A | (–) involvement of COM more expensive and reduced also in the new Agri GI system | N/A |
| **(B) EUIPO** | N/A | N/A | (+) outsourcing to EUIPO most efficient and self-financing option | N/A |
| **Costs per GI** | | | (A): EUR 20 000<br>(B): EUR 17 000 | |
| **2.4 Control & enforcement** | | | | |
| **(A) Agri GI** | (--) Public enforcement lowers burden<br>(+) Use existing reputation of Agri GI system (as in PO1) | (--) Costly enforcement system, additional reporting obligations | N/A | N/A |
| **(B) self declaration** | (+) Affordable option for micro companies and self-employed artisanal | (-) Control system based on self-declaration and random checks limits costs; | N/A | N/A |
| **Costs per GI** | (A): EUR 9 000<br>(B): EUR 8 700 | (A): EUR 4 500<br>(B): EUR 4 000 | | |
| **2.5. Co-existence of EU and national titles and regimes** | | | | |
| **(A) Replace** | N/A | (+) lower cost for national authorities | N/A | (+) |
| **(B) Co-exist** | N/A | (0) | N/A | (-) potential confusion of different certifications/logos |

Legend: ++ significant positive impact; + positive impact; **0** neutral; **-** negative impact; **--** significant negative impact;