



BACKGROUND PAPER

PANEL: NON-AGRICULTURAL GIs - POLICY OPTIONS

This panel will launch a discussion on the protection of non-agricultural Geographical Indications (GIs). It will explore the options to improve the protection of non-agricultural GIs which often make an important part of local identity, attract tourism and contribute to job creation.

1. SCENE-SETTER:

In the EU, agricultural products benefit from *sui generis* GI protection for wines, spirits and other agricultural products and foodstuffs. However, there is currently no single EU-wide mechanism for the protection of non-agricultural GIs such as ceramics, glassware, clothing, lace, jewellery, furniture or knives.

Many Member States, producers and the European Parliament have called on the European Commission to create a regulatory framework for the protection of geographically linked industrial and handicraft products. In 2014, a Commission Green Paper generated strong stakeholder support for an initiative at EU level. 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 propose a legislative proposal.¹

In November 2019, the EU acceded the Geneva Act of the Lisbon Agreement on Appellations of Origins and Geographical Indications that covers both geographical indications for agricultural and non-agricultural products.

On 10 November 2020, the Council adopted conclusions on Intellectual Property policy and indicated that it “*STANDS READY TO CONSIDER the introduction of a system for sui generis protection of non-agricultural products, on the basis of a thorough impact assessment of its potential costs and benefits*” (par. 10).

¹ Documents available at https://ec.europa.eu/growth/industry/policy/intellectual-property/geographical-indications/non-agricultural-products_en

The Commission is working on an Intellectual Property (IP) Action Plan, scheduled for adoption on 24 November 2020. The Action Plan will announce the Commission's policy related to non-agricultural GIs.

2. CHALLENGES

The current regulatory framework for the protection of GIs for non-agricultural products in the EU such as Murano glass, Solingen cutlery and Donegal tweed, is fragmented. More than half of the Member States have established national and/or regional sui-generis protection systems, others only use trade marks and/or unfair competition rules. At EU level, producers can certify individually or collectively the origin of their products using a collective or individual trade mark, but producers of industrial and handicraft products are not able to certify at EU level the link between the quality and the geographical origin of their products with pre-determined controlled standards, using a certification trade mark.

Under the current fragmented system, producers are less incentivized to invest into geographically linked products, to cooperate in order to specify product qualities and to create niche markets. As a result, small producers may not fully benefit from their competitive advantage and they lose market opportunities.

The regions in which the producers operate suffer from lack of investment. The potential for tourism in these often-underdeveloped regions remains untapped. Their cultural heritage is also less preserved. Helping these regions attracting work force and tourists is of special importance for the recovery of the European economy in the aftermath of the COVID-pandemic.

In addition, other producers, including from countries outside of the EU, may try to pass off their products as authentic, thereby threatening the value of such collective goodwill ("free-rider problem"). For producers of authentic products, this means unfair competition and loss of market opportunities with fewer possibilities to re-invest in production and commercialisation.

Without appropriate EU-wide GI rules for non-agricultural products, consumers could find it more difficult to distinguish authentic from non-authentic goods. The gap in the current system calls for a more coordinated approach to ensure the appropriate use of GI's as well as guarantee authenticity to consumers, differentiation of products on the market and secure higher-value sales and exports. Producers consider the visibility of quality logos as a key benefit of GIs.

Finally, the absence of a uniform sui generis system of protection may weaken the EU at a global level. Possibilities for EU agricultural GI products to be recognised and protected as such by third countries, are reduced by the fact that the EU cannot recognise third country non-agricultural GIs in return. There is currently no possibility to get protection under the Geneva Act for EU producers seeking protection for non-agricultural GIs, while the EU will have to reject third countries' requests for such protection.

On the other hand, it has been argued that existing consumer legislation, trade-mark law and specific national sui-generis GI systems provides already for vast options to protect non-agricultural GIs across the EU. The fact that agricultural GI products depend on factors such as soil and climate, whereas the production of non-

agricultural GIs are mainly linked to craftsmanship, would require a different approach for the two types of products.

3. QUESTIONS FOR DISCUSSION

- 1) In general terms, **what would you advise the European Commission** on the next steps for the non-agricultural GIs? Why?
- 2) In case you believe that the European Commission should propose the **introduction of a EU GI protection regime for non-agricultural products**:
 - a) to what extent should such system be inspired by the GI regime for agricultural products?
 - b) what elements of the current GI regime for agricultural products should in your view not be followed?
 - c) what do you see as the main challenges in terms of monitoring of producers and the enforcement of a possible GI indication?
 - d) should national non-agricultural GI protection systems continue to exist next to a sui-generis EU system?
- 3) In case you believe that the **European Commission should reform the trade mark system** to accommodate the needs of producers of non-agricultural products to market their products as guaranteeing a certain quality linked to a specific geographical region:
 - a) what would be elements of such reform of the trade-mark system?
 - b) what would be the added-value in comparison to a self-standing EU GI protection regime?
- 4) In case you believe that the **European Commission should refrain from any legislative initiative** in the area of non-agricultural GIs:
 - a) how should the above-mentioned challenges be addressed?
 - b) would (non-binding) recommendations or other voluntary measures be useful?