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BACKGROUND PAPER

PANEL: GI CONTROLS & ENFORCEMENT: POLICY OPTIONS

This panel will explore *controls* (the production-stage verification of producers' compliance with the product specification) and *enforcement* (in the marketplace) of geographical indications (GIs) with a view to reducing non-compliance and combatting fraud.

1. OBJECTIVES:

GI controls and enforcement actions both serve to (a) guarantee to consumers the authenticity and quality declared by GI producers, while (b) ensuring that the latter have their rights protected. This objective is currently addressed by three main administrative and legal avenues:

- **Food law: official controls:** EU legislation establishes main principles and standards for GI controls and enforcement and provides the parameters within which specific national bodies are identified to implement food law. The basic legislation is the [Official Controls Regulation](#) (OCR) that is specifically referenced by the GI schemes. National authorities have food-sector inspectorates which implement commonly agreed planning, reporting and notifications. Member States set priorities for resources, assess risks, and have flexibility for example to assign tasks to certification bodies. The overall national systems are audited by the Commission.
- **Enforcement of EU law:** GIs are also enforced by Member States based on their general responsibility to apply and implementing EU law, as summarised in the 2017 policy document '[EU law: Better results through better application](#)'. National systems should ensure the credibility of the quality scheme, effective legal protection of GIs with access to rapid and effective national redress mechanism. The Commission is not an implementation authority, nor systematically auditing national systems, and only acts in case of systemic failure to enforce Union law at national level. This is the structure used to implement the single market and other Union-based obligations.
- **Private remedies:** producers can also play an active role in the protection of their rights and are empowered to initiate and benefit from various types of actions against infringement of their IP rights. Some actions, like notifying

Customs of a suspected fraudulent shipment, incur modest fees, while others, like taking a case to court, can include substantial legal costs.

2. CHALLENGES

- The EU rules concerning controls of GIs (including monitoring of the use of GI names in the market place) are contained under several regulations and legal bases – such as the OCR, [Food information for consumers](#), [IP enforcement legislation](#), and sector-specific [legislation on GIs](#), **which can be difficult to find and follow**.
- In times of intense pressure on administrative budgets, Member States have to choose the best systems to suit their priorities, risk assessments and needs. This can result in **divergences between Member States** and a **scaling back of resources** available to enforce GIs (diverting resources to food safety)
- Differences in **national procedures** can impede efforts to enforce GIs from one Member State seeking to enforce their rights in another Member State. Specific systems like the [Administrative Assistance and Cooperation System](#) have been developed to directly address this in the context of food fraud.
- GI schemes do not require GI producers to be issued with a **certificate** to demonstrate they are genuine producers of the GI-designated product¹. As a result traders and inspectors in different Member States and internationally can find the task of verifying a producer's *bona fides* a challenge. In some situations, it might give rise to confusion and lack of confidence that the GI products fulfil their specific requirements.
- Inspectors report that a common enforcement chain comprises: interested groups monitor the market to spot misuses of the GI; if they find any, they inform their national authorities; who, in turn, contact the authorities in the Member State where the alleged infraction takes place. Few GI producer groups have the resource to be present in every Member State. Further, as GI producer groups they have a multiplicity of legal formations – from a parastatal body to a club of local producers – proving *locus* to take action on behalf of a GI's right-holders can be a challenge. Access to the [IP enforcement portal](#) is one example where the applicant must have title to the IP right concerned.
- The **costs of enforcement actions** to be borne by the producers might be too high, in particular when combining them with high and burdensome costs of official controls that are also paid by producers. Controls on production are required to be performed by governmental bodies (having suitably qualified personnel) or by certification bodies accredited to [ISO/IEC 17065:2012 Conformity assessment – Requirements for bodies certifying products, processes and services](#) on conformity assessment bodies. This principle applies within the EU and for GIs imported from non-EU countries. However, the requirements are considered burdensome by some operators who would prefer the role of controls be allocated to the **producer group or a distinct and suitably qualified department of the producer group**. Systems such as participative guarantee

¹ A proposal for such a certificate has been included in the forthcoming Spirit GI rules (under finalisation)

systems² (PGS) used in particular in the organic sector (outside the EU) have been suggested, as low-cost alternatives, particularly for small-volume GIs.

– *Tackling GI misuses and frauds on the **internet** is the subject of a separate Panel.*

3. QUESTIONS

- (1) Is there a need to gather all the rules on GI official controls (including monitoring of the use of GI names in the market place), make them GI-specific and place them in a single piece of legislation for all GI sectors (food, wine and spirit drinks)? Should new harmonised rules be created/added? What could be the costs in terms of resources and benefits of such solution?
- (2) To what extent are GIs the subject of fraud and usurpation within the EU?
- (3) Where are the main types of non-compliances (at production stage, distribution, retail)?
- (4) What are the main types of non-compliance? (fraud – deliberate misleading consumers with intention to profit; non-conformity in use of the logo; inadvertent non-compliance)
- (5) What could be the benefits and costs of granting every GI producer a certificate to prove participation in the GI scheme?
- (6) How the producers could more actively participate in GI enforcement and which tools, like the IP Enforcement Portal, can be better used to empower GI producers to enforce GIs across the Union?

European Commission
DG Agriculture and Rural Development
Unit B.3. – Geographical indications



² <http://www.fao.org/agroecology/database/detail/en/c/1250804/>